

**IMPACTS OF THE BUREAU OF LAND
MANAGEMENT'S HYDRAULIC FRAC-
TURING RULE ON INDIAN TRIBAL
ENERGY DEVELOPMENT**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

Thursday, April 19, 2012

Serial No. 112-106

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.fdsys.gov>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

73-938 PDF

WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
EDWARD J. MARKEY, MA, *Ranking Democrat Member*

Don Young, AK	Dale E. Kildee, MI
John J. Duncan, Jr., TN	Peter A. DeFazio, OR
Louie Gohmert, TX	Eni F.H. Faleomavaega, AS
Rob Bishop, UT	Frank Pallone, Jr., NJ
Doug Lamborn, CO	Grace F. Napolitano, CA
Robert J. Wittman, VA	Rush D. Holt, NJ
Paul C. Broun, GA	Raúl M. Grijalva, AZ
John Fleming, LA	Madeleine Z. Bordallo, GU
Mike Coffman, CO	Jim Costa, CA
Tom McClintock, CA	Dan Boren, OK
Glenn Thompson, PA	Gregorio Kilili Camacho Sablan, CNMI
Jeff Denham, CA	Martin Heinrich, NM
Dan Benishek, MI	Ben Ray Lujan, NM
David Rivera, FL	Betty Sutton, OH
Jeff Duncan, SC	Niki Tsongas, MA
Scott R. Tipton, CO	Pedro R. Pierluisi, PR
Paul A. Gosar, AZ	John Garamendi, CA
Raúl R. Labrador, ID	Colleen W. Hanabusa, HI
Kristi L. Noem, SD	Paul Tonko, NY
Steve Southerland II, FL	<i>Vacancy</i>
Bill Flores, TX	
Andy Harris, MD	
Jeffrey M. Landry, LA	
Jon Runyan, NJ	
Bill Johnson, OH	
Mark Amodei, NV	

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
Jeffrey Duncan, *Democrat Staff Director*
David Watkins, *Democrat Chief Counsel*

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

DON YOUNG, AK, *Chairman*
DAN BOREN, OK, *Ranking Democrat Member*

Tom McClintock, CA	Dale E. Kildee, MI
Jeff Denham, CA	Eni F.H. Faleomavaega, AS
Dan Benishek, MI	Ben Ray Lujan, NM
Paul A. Gosar, AZ	Colleen W. Hanabusa, HI
Raúl R. Labrador, ID	Edward J. Markey, MA, <i>ex officio</i>
Kristi L. Noem, SD	
Doc Hastings, WA, <i>ex officio</i>	

CONTENTS

	Page
Hearing held on Thursday, April 19, 2012	1
Statement of Members:	
Boren, Hon. Dan, a Representative in Congress from the State of Oklahoma	4
Prepared statement of	5
“Hydraulic Fracturing on Public Lands: Tribal Consultation Sessions, Agenda” submitted for the record	14
Lamborn, Hon. Doug, a Representative in Congress from the State of Colorado	45
Prepared statement of	46
Markey, Hon. Edward J., a Representative in Congress from the Commonwealth of Massachusetts	6
Prepared statement of	7
Young, Hon. Don, the Representative in Congress for the State of Alaska	1
Prepared statement of	3
Statement of Witnesses:	
Cuch, Hon. Irene C., Chairwoman, Ute Tribal Business Council, Ute Indian Tribe of the Uintah and Ouray Reservation	28
Prepared statement of	30
DeCoteau, Larry, District 4 Tribal Council Representative, Turtle Mountain Band of Chippewa Indians	55
Prepared statement of	56
Groen, Wilson, President and CEO, Navajo Nation Oil and Gas Company	63
Prepared statement of	64
Hall, Hon. Tex G., Chairman, Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation	20
Prepared statement of	22
Martel, Hon. Wesley, Co-Chairman, Eastern Shoshone Tribe, Wild River Reservation	51
Prepared statement of	53
Olguin, Hon. James M. “Mike,” Vice Chair, Southern Ute Indian Tribal Council, Southern Ute Indian Tribe	40
Prepared statement of	42
Russell, Hon. Scott, Vice President, Rocky Mountain Region, National Congress of American Indians	57
Prepared statement of	59
National Congress of American Indians Resolution #ECWS-12-005 submitted for the record	61
Show, Hon. T.J., Chairman, Blackfeet Tribal Business Council, Blackfeet Nation	35
Prepared statement of	36
Spisak, Tim, Deputy Assistant Director, Minerals and Realty Management, Bureau of Land Management, U.S. Department of the Interior	8
Prepared statement of	10

**OVERSIGHT HEARING ON THE IMPACTS OF
THE BUREAU OF LAND MANAGEMENT'S
HYDRAULIC FRACTURING RULE ON INDIAN
TRIBAL ENERGY DEVELOPMENT.**

**Thursday, April 19, 2012
U.S. House of Representatives
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to notice, at 11:04 a.m., in Room 1324, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, Boren, Kildee, and Markey.

Also Present: Representative Lamborn.

Mr. YOUNG. The Committee will come to order. The Chairman notes the presence of a quorum, which under Rule 3 is two Members. The Subcommittee on Indian and Alaska Native Affairs is meeting today to hear testimony on "The Impacts of the Bureau of Land Management's Hydraulic Fracturing Rule on Indian Tribal Energy Development."

Under Committee Rule 4(f), opening statements are limited to myself and the Ranking Member of the Subcommittee, and we hope to hear from the witnesses quickly.

However, I ask unanimous consent to include any other Members' opening statements that are submitted to the Clerk by close of business today.

Hearing no objection, so ordered.

Mr. YOUNG. I also ask unanimous consent that the gentleman from Colorado, Mr. Lamborn, be allowed to join us on the dais when he shows up and participate in the hearing.

Without any objection, so ordered.

**STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ALASKA**

Mr. YOUNG. Today's hearing was scheduled in response to violations of the Department of the Interior's tribal consultation policy instituted by Secretary Ken Salazar.

Pursuant to this policy, an agency within the Department must undertake comprehensive and meaningful consultation with tribal leaders whenever the agency proposes a rule or takes any action that affects the lands, rights or interests of the tribes they represent.

The policy was not scribbled on the back of an envelope. It was not a suggestion or an aspiration.

It is a formal policy established by the Secretarial Order following a lengthy "consultation on consultation," which was launched by President Obama in 2009 when he issued the White

House Memorandum on Tribal Consultation. It expands on the Executive Order issued in 2000 by President Bill Clinton.

To develop the trial consultation policy, more than 200 Federal officials participated in regional consultation sessions in seven cities with 300 tribal representatives.

Based on these extensive meetings, a draft consultation policy was given to the tribes for their review and comment in January 2011.

At that time, Secretary Salazar said "We must have a policy that embodies the best consultation practices available, responds to the needs of tribal leaders to be more engaged in policy development and promotes more responsible decision making on issues affecting American Indians and Alaskan Natives."

When the final policy was installed on December 1, 2011, the Secretary noted that "The new framework institutionalizes meaningful consultation so that tribal leaders are at the table and engaged when it comes to the matters that affect them."

Indeed, the significance of the consultation policy was such that it was a central feature of the third White House Tribal Nations Conference, where President Obama remarked "You have an Administration that understands the challenges that you face, and most importantly, you have a President that's got your back."

Unfortunately, in light of the testimony I reviewed prior to this hearing, I have to say that while the Department of the Interior earns an "A" for promises to consult with tribes, it gets an "F" for promises actually kept.

For while tribes were told they would have a seat at the table with Federal agencies, the Bureau of Land Management excluded them from the process of drafting a rule with a potentially devastating impact on their sovereignty and economies.

Tribes were not afforded an opportunity to provide input or even time to analyze the draft rule. In fact, it is my understanding that this rule may be at OMB today for a final review, again, without tribal leaders at the table.

The draft rule concerns a common well stimulation technique used by the oil and gas industry known as "hydraulic fracturing."

The rule will impose duplicative paperwork, red tape, additional delays and costs beyond what tribes and oil and gas operators already endure when Indian land is developed for oil and gas production.

It is a rule that wrongly treats lands held in Trust for the exclusive use and benefit of Indians as public land.

This is not a minor issue. It is a violation of tribal sovereignty. In terms of dollars alone, the rule will be dramatic because the fossil fuel industry in Indian Country could rival that of Indian gaming.

A number of Indian reservations suffer jobless rates, as we all know, from 50 to 80 percent. Oil and gas leasing can make a positive dent in these horrible numbers.

New jobs, especially year round, high wage jobs available in the oil and gas industry, can and will have a dramatic effect on reducing unemployment and poverty on Indian reservations.

If the BLM rule goes in effect, kiss those tribal jobs goodbye. Many reservations are checkerboarded, so oil and gas operators can

move a few feet across the reservation boundary line to private and state lands where the rules do not apply, thanks to the Department of the Interior, while non-Indian land owners will prosper, the tribes will lose, again.

This would be nothing less than another breach of the United States' Trust responsibility to Indians.

I look forward to our witnesses today, and I can say one thing, this is what I have been trying to do in this Committee with the Ranking Member, trying to straighten out this gobbledy-gook, saying this is self determination, and have our country put rules in that do not affect other lands.

This is wrong, it is inappropriate, and we hope to solve this problem.

With that, I recognize the Ranking Member for five minutes for any statement he may have.

[The prepared statement of Mr. Young follows:]

**Statement of The Honorable Don Young, Chairman,
Subcommittee on Indian and Alaska Native Affairs**

Today's hearing was scheduled in response to a violation of the Department of the Interior's tribal consultation policy instituted by Secretary Ken Salazar.

Pursuant to this policy, an agency within the Department must undertake comprehensive, meaningful consultation with tribal leaders whenever the agency proposes a rule or takes any action that affects the lands, rights, or interests of the tribes they represent.

The policy was not scribbled on the back of an envelope. It is not a suggestion or an aspiration.

It is a formal *policy* established by Secretarial Order following a lengthy "consultation on consultation," which was launched after President Obama in 2009 issued a White House Memorandum on Tribal Consultation. It expands on an Executive Order issued in 2000 by President Bill Clinton.

To develop the tribal consultation policy, more than 200 federal officials participated in regional consultation sessions in seven cities with 300 tribal representatives. Based on these extensive meetings, a draft consultation policy was given to tribes for their review and comment in January 2011. At the time, Secretary Salazar said, "We must have a policy that embodies the best consultation practices available, responds to the needs of Tribal leaders to be more engaged in policy development and promotes more responsible decision-making on issues affecting American Indians and Alaska Natives."

When the final policy was installed on December 1, 2011, the Secretary noted that, "The new framework institutionalizes meaningful consultation so that tribal leaders are at the table and engaged when it comes to the matters that affect them."

Indeed, the significance of the consultation policy was such that it was a central feature of the third White House Tribal Nations Conference, where President Obama remarked, "You have an administration that understands the challenges that you face and most importantly you have a president that's got your back."

Unfortunately, in light of the testimony I reviewed prior to this hearing, I have to say that while the Department of the Interior earns an "A" for its promises to consult with tribes, it gets an "F" for promises actually kept.

For while tribes were told they would have a seat at the table with federal agencies, the Bureau of Land Management excluded them from the process of drafting a rule with a potentially devastating impact on their sovereignty, and their economies. Tribes were not afforded an opportunity to provide input on, let alone the time to analyze, the draft rule. In fact, it is my understanding this rule may be at OMB today for a final review—again, without tribal leaders at the table.

The draft rule concerns a common well stimulation technique used by the oil and gas industry known as hydraulic fracturing. The rule will impose duplicative paperwork, red tape, and additional delays and costs beyond what tribes and oil and gas operators already endure when Indian land is developed for oil and gas production. It is a rule that wrongly treats land held in trust for the *exclusive use and benefit* of Indians as *public* land.

This is not a minor issue. It is a violation of tribal sovereignty. In terms of dollars alone, the rule will be dramatic because the fossil fuel industry in Indian Country could rival that of Indian gaming.

A number of Indian reservations suffer jobless rates ranging from 50 to 80 percent. Oil and gas leasing can make a positive dent in these horrible numbers. New jobs—especially year-round, high wage jobs available in the oil and gas industry—can and will have a dramatic effect on reducing unemployment and poverty on Indian reservations.

But if the BLM rule goes into effect, kiss these tribal jobs good-bye. Many reservations are checkerboarded, so oil and gas operators can move a few feet across the reservation boundary line to private and state lands where the rule will not apply. Thanks to the Department of the Interior, while non-Indian landowners will prosper, the tribes will lose.

This would be nothing less than another breach of the United States' trust responsibility to Indians.

I look forward to hearing the testimony of tribal leaders today to discuss the impact of the draft rule, and what steps we can take to address it.

**STATEMENT OF THE HON. DAN BOREN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. BOREN. Thank you, Mr. Chairman. First, let me thank our witnesses that are here today to discuss the topic of hydraulic fracturing and the Bureau of Land Management's consultation process.

I look forward to hearing all of their testimonies.

There is no doubt that the United States is in great need of natural gas reserves that are spread across this nation. It is a cleaner, cheaper fuel source that can fulfill our energy needs for the next 100 years and beyond.

Advances in hydraulic fracturing technologies have opened up development capabilities while minimizing the impact on surrounding lands.

This technology has spread to our tribal neighbors, enabling them to fight high levels of unemployment and poverty with energy development.

Recently, the Bureau of Land Management held a series of meetings with tribes about hydraulic fracturing and possible regulation.

Chairman Young and I wrote a letter dated February 8 that expressed our concern over the process and requested more information.

As we stated, I strongly believe that placing additional undue barriers for tribal energy development is unwise, it is also counter-productive.

Because of the nature of the Government to Government relationship, we must be especially cautious to consider the tribal land rights in all decision making.

It is our duty to provide assistance in sharing best practices, but we must be careful about impeding on sovereign rights.

After reviewing the documents provided by the BLM per the Chairman and my request, I became deeply concerned that tribes had little to no input in the regulatory process.

As stated in Secretary Salazar's Executive Order No. 3317, and I quote, "Consultation is a process that aims to create effective collaboration with Indian tribes and to inform Federal decision makers."

We are here today to ensure that the Government has created effective collaboration. If, as I suspect, the BLM has not made the effort to involve tribes to the extent necessary, we must open a dia-

logue today between tribes and the Administration to begin a cooperative review of hydraulic fracturing before any rulemaking proceeds.

From the written testimonies, it is clear that no two tribes have had a similar experience when it comes to energy development. Thus, we must ensure that the consultation process is extensive enough to address the individual needs before moving forward.

Again, I look forward to learning more about the BLM's process from both the Department's perspective and those of the tribes.

Again, I would like to thank our witnesses, and I look forward to hearing from each and every one of you on this important issue. [The prepared statement of Mr. Boren follows:]

**Statement of The Honorable Dan Boren, Ranking Member,
Subcommittee on Indian and Alaska Native Affairs**

Thank you Mr. Chairman. First let me thank our witnesses that are here today to discuss the topic of hydraulic fracturing and the Bureau of Land Management's consultation process. I look forward to hearing your testimonies.

There is no doubt that the United States is in great need of the natural gas reserves that are spread across the nation. It is a cleaner, cheaper fuel source that can fulfill our energy needs for the next hundred years and beyond.

Advances in hydraulic fracturing technologies have opened up development capabilities while minimizing the impact on surrounding lands. This technology has spread to our tribal neighbors, enabling them to fight high levels of unemployment and poverty with energy development.

Recently, the Bureau of Land Management held a series of meetings with tribes about hydraulic fracturing and possible regulation. Chairman Young and I wrote a letter dated February 8th that expressed our concern over the process and requested more information. As we stated, I strongly believe that placing additional undue barriers for tribal energy development is unwise and counterproductive.

Because of the nature of the government to government relationship, we must be especially cautious to consider the tribal land rights in all decision making. It is our duty to provide assistance in sharing best practices but we must be careful about impeding on sovereign rights.

After reviewing the documents provided by the BLM per the Chairman and my request, I became deeply concerned that tribes had little to no input in the regulatory process. As stated in Secretary Salazar's Executive Order Number 3317, "Consultation is a process that aims to create effective collaboration with Indian tribes and to inform Federal decision-makers."

We are here today to ensure that tribes believe the government has created effective collaboration. If, as I suspect, the BLM has not made the effort to involve tribes to the extent necessary, we must open a dialogue today between tribes and the administration to begin a cooperative review of hydraulic fracturing before any rulemaking proceeds.

From the written testimonies, it is clear that no two tribes have had a similar experience when it comes to energy development. Thus, we must ensure the consultation process is extensive enough to address the individual needs before moving forward.

I look forward to learning more about the BLM's process from both the Department's perspective and those of the tribes. Again, I'd like to thank our witnesses here today and I look forward to learning more about this important issue. I yield back.

Mr. YOUNG. I thank my Ranking Member and thank him for being on time today. I deeply appreciate that.

[Laughter.]

Mr. YOUNG. Anyway, the first panel we have now is Tim Spisak, Deputy Assistant Director—

Mr. MARKEY. Would it be possible for me to make an opening statement?

Mr. YOUNG. No. I am kidding. Go ahead.

STATEMENT OF THE HON. EDWARD MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman, very much. I would like to welcome the tribal leaders joining us today.

Advances in horizontal drilling and hydraulic fracturing are dramatically reshaping America's energy equation, shale formations that once seemed impossible to tap and now yielding oil and natural gas, helping to reduce imports and creating a competitive advantage for U.S. manufacturing and chemical industries.

Some of these newly accessible shale formations are below tribal lands, including parts of the enormous Bakken shale in North Dakota and Montana.

Oil and gas development is already benefitting parts of Indian Country, and development of tribal shale resources will provide further economic opportunities.

The development of these resources does have risks though. Hydraulic fracturing requires large amounts of water, a serious challenge in arid parts of the country.

The process can create air and water pollution that puts drinking water and public health at risk. In fact, today, we will hear from Shoshone Co-Chairman Wes Martel about the contamination of the groundwater supply for the Town of Pavilion, Wyoming.

The EPA has detected benzene, methane, and synthetic chemicals consistent with hydraulic fracturing fluids in the town's aquifer.

Although the investigation is still ongoing, the loss of Pavilion's drinking water supply should raise concern for all.

As we can see from Pavilion's experience and from the report that Congressman Holt and I issued documenting drilling violations on Federal lands, the status quo is not working.

We found that over a 13 year period, starting in the 1990s, 335 oil and gas companies committed more than 2,000 violations that endangered health, safety and environment.

For all of these violations, they were fined just \$273,000. That is an average of only \$135 per violation.

Companies were drilling without adequate cement to protect water sources, without blow out preventers that would halt catastrophic spills, and in at least one case, a company dumped fluids directly from the rig into a nearby river.

Rules that govern oil and natural gas production on public and tribal lands have not been updated since 1982.

Furthermore, hydraulic fracturing was exempted from key parts of seven major Federal environmental laws designed to protect public health, air and water by the oil companies back in the 2005 Energy Policy Act.

Even as that legislation tried to promote tribal energy self determination through the Indian Energy Title, it undermined the protections from pollution from hydraulic fracturing.

To ensure adequate protections are in place for hydraulic fracturing, which now occurs on 90 percent of wells drilled on public and tribal land, the Bureau of Land Management is working to update these rules.

Examining the current best practices, BLM is striving to ensure that hydraulic fracturing can be done safely and economically.

Given its Treaty obligations and Trust responsibility, the United States must consult with tribes on a Government to Government basis when developing Federal policies with tribal implications.

President Obama has underscored the importance of tribal consultation. Tribes must be at the table for any new regulatory proposal that affects their lands, including any plans BLM is proposing for hydraulic fracturing operations.

At the same time, Federal regulations of energy and resource development on Indian lands is tied closely with the Federal Trust responsibility.

I know the tribes have the best interest of their people in mind when engaging in energy development on their lands.

The Federal Government's Trust responsibility also requires that we ensure basic protections are in place in order to meet our obligations.

I hope today's hearing can foster the cooperation between tribes and the Federal Government that will lead to energy development that supports Indian economic development and protects the health of tribal people and their lands.

Mr. Chairman, I thank you for the courtesy of allowing me to make an opening statement, and I yield back.

[The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,
Committee on Natural Resources**

Thank you, Mr. Chairman. I'd like to welcome the tribal leaders joining us today. Advances in horizontal drilling and hydraulic fracturing are dramatically reshaping America's energy equation. Shale formations that once seemed impossible to tap are now yielding oil and natural gas, helping to reduce imports and creating a competitive advantage for the U.S. manufacturing and chemical industries.

Some of these newly accessible shale formations are below tribal lands, including parts of the enormous Bakken Shale in North Dakota and Montana. Oil and gas development is already benefiting parts of Indian country, and development of tribal shale resources will provide further economic opportunities.

The development of these resources does have risks though. Hydraulic fracturing requires large amounts of water, a serious challenge in arid parts of the country. The process can create air and water pollution that puts drinking water and public health at risk. In fact today we will hear from Eastern Shoshone Co-Chairman Wes Martel about the contamination of the groundwater supply for Wind River Reservation town of Pavillion, Wyoming. The EPA has detected benzene, methane and synthetic chemicals consistent with hydraulic fracturing fluids in the town's aquifer. Although the investigation is still ongoing, the loss of Pavillion's drinking water supply should raise concerns for all.

As we can see from Pavillion's experience and from the report that Congressman Holt and I issued documenting drilling violations on federal lands, the status quo is not working. We found that over a 13-year period starting in the 1990s, 335 oil and gas companies committed more than 2,000 violations that endangered health, safety and the environment. For all of these violations they were fined just \$273,875. That's an average of only \$135 per violation. Companies were drilling without adequate cement to protect water sources, without blow-out preventers that would halt catastrophic spills and, in at least one case, a company dumped fluids directly from the rig into a nearby river.

Rules that govern oil and natural gas production on public and tribal lands have not been updated since 1982. Furthermore, hydraulic fracturing was exempted from key parts of 7 major federal environmental laws designed to protect public health, air and water by the oil companies' Republican allies in the 2005 Energy Policy Act. Even as that legislation tried to promote Tribal energy self-determination through the Indian energy title, it undermined protections for all Americans from pollution from hydraulic fracturing. To ensure adequate protections are in place for hydraulic fracturing, which now occurs on 90 percent of wells drilled on public and Tribal land, the Bureau of Land Management is working to update their rules. Examining

the current best practices, BLM is striving to ensure that hydraulic fracturing can be done safely *and* economically.

Given its treaty obligations and trust responsibility, the United States must consult with tribes on a government-to-government basis when developing federal policies with tribal implications. President Obama has underscored the importance of tribal consultation. Tribes must be at the table for any new regulatory proposal that affects their lands, including any plans BLM is proposing for hydraulic fracturing operations.

But at the same time, federal regulation of energy and resource development on Indian lands is tied closely with the federal trust responsibility. I know that tribes have the best interests of their people in mind when engaging in energy development on their lands. The federal government's trust responsibility also requires that we ensure basic protections are in place in order to meet our obligations. I hope today's hearing can foster the cooperation between tribes and the federal government that will lead to energy development that supports Indian economic development and protects the health of tribal people and their lands.

I look forward to the testimony of our witnesses today and I yield back.

Mr. YOUNG. The gentleman is welcome.

At this time, we will draw our first witness, Mr. Tim Spisak, Deputy Assistant Director, Minerals and Realty Management, Bureau of Land Management.

You are up.

**STATEMENT OF TIM SPISAK, DEPUTY ASSISTANT DIRECTOR,
MINERALS AND REALTY MANAGEMENT, BUREAU OF LAND
MANAGEMENT**

Mr. SPISAK. Mr. Chairman and members of the Subcommittee, thank you for the opportunity to discuss the Bureau of Land Management's development of hydraulic fracturing rules and their application on Federal, tribal, and individual Indian Trust lands.

The BLM administers over 245 million surface acres and approximately 700 million acres of onshore Federal mineral estates.

Together with the Bureau of Indian Affairs, we also provide permitting and oversight services on approximately 56 million acres of Indian Trust minerals.

The development of the energy resources from BLM managed lands will continue to play a critical role in meeting the nation's energy needs and fueling our economy.

In Fiscal Year 2011, onshore Federal oil and gas royalties exceeded \$2.7 billion, approximately half of which was paid directly to the states in which the production occurred.

Tribal oil and gas royalties exceeded \$400 million with 100 percent of those revenues paid to the tribes and individual Indians owning the land.

Oil and gas production from shale formations scattered across the United States has grown considerably and is expected to continue in the coming decades.

Factors contributing to this success include technological advances in hydraulic fracturing when combined with horizontal drilling.

This rise in production and advances in technology are dramatically evident on the Fort Berthold Indian Reservation, for example, which lies in the heart of the Bakken oil and gas region in North Dakota.

At Fort Berthold, applications for permits to drill have increased from zero in 2007 to 175 last year.

Royalty payments from production from Trust minerals has increased from \$4.5 million in 2009 to approximately \$117 million this last year.

At Fort Berthold earlier this month, Secretary Salazar unveiled initiatives to expedite safe and responsible leasing and development of domestic energy resources on public and Indian Trust lands.

As part of the BLM's ongoing efforts to ensure efficient processing of oil and gas permit applications on both Indian Trust and public lands, the agency will implement a new automated tracking system across the Bureau that could reduce the review time for permit applications by two-thirds.

This initiative comes as part of the Department's efforts to continually meet increased demands for oil and gas development on public and Indian lands across the country.

The BLM estimates that approximately 90 percent of the wells drilled on public and Indian lands are stimulated by hydraulic fracturing techniques.

The increasing use of hydraulic fracturing has raised concerns about the potential impacts on water availability and quality, particularly with respect to the chemical composition of fracturing fluids in the methods used.

The BLM recognizes that some but not all states have taken action to address hydraulic fracturing in their own regulations.

The BLM's proposed rulemaking is intended to provide consistent protection of the important Federal and Indian resource values that may be affected by the use of hydraulic fracturing.

The BLM's draft rule contains three key provisions; disclosure of the chemicals used in hydraulic fracturing operations with appropriate protections for trade secrets; assurance of well bore integrity to minimize the risk of fracturing fluids leaking into nearby aquifers; and water management requirements to apply to the fluids that flow back to the surface directly after hydraulic fracturing has taken place.

The development of this hydraulic fracturing rule will include tribal consultation of the Department's consultation policy. This policy emphasizes trust, respect, and shared responsibility by providing tribal governments an expanded role to inform the Federal policy that impacts Indian lands.

In January 2012, the BLM conducted a series of meetings in the West where there was significant development of Indian and oil and gas resources.

Nearly 180 tribal leaders were invited to attend these meetings held in Tulsa, Billings, Montana, Salt Lake City, and Farmington, New Mexico.

As the agency continues to consult with tribal leaders throughout this rulemaking process, responses from these representatives will inform our actions and define the scope of acceptable hydraulic fracturing rule options.

Mr. Chairman, thank you for the opportunity to testify. I would be happy to answer any questions that you might have at this time.

[The prepared statement of Mr. Spisak follows:]

Statement of Tim Spisak, Deputy Assistant Director, Minerals and Realty Management, Bureau of Land Management, U.S. Department of the Interior

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the Bureau of Land Management's (BLM) development of hydraulic fracturing rules and their application on Federal, Tribal, and individual Indian Trust lands.

The BLM, an agency of the U.S. Department of the Interior (Department), is responsible for protecting the resources and managing the uses of our nation's public lands, which are located primarily in 12 western states, including Alaska. The BLM administers more land—over 245 million surface acres—than any other Federal agency. The BLM manages approximately 700 million acres of onshore Federal mineral estate throughout the Nation, including the subsurface estate overlain by properties of other Federal agencies such as the Department of Defense and the U.S. Forest Service. The BLM, together with the Bureau of Indian Affairs (BIA), also provides permitting and oversight services under the Indian Mineral Leasing Act of 1938 on approximately 56 million acres of land held in trust by the federal government on behalf of tribes and individual Indian owners. The BLM works closely with surface management agencies, including the BIA and Tribal governments, in the management of the subsurface mineral estate. We are mindful of the agency's responsibility for stewardship of public land resources and the public and Indian trust oil and gas assets that generate substantial revenue for the U.S. Treasury, the states, and Tribal governments and individuals.

Background

The Obama administration is committed to promoting safe, responsible, and environmentally sustainable domestic oil and gas production as part of a broad energy strategy that will protect consumers, human health, and the environment, and reduce our dependence on foreign oil. Secretary Salazar has made clear that as we move toward the new energy frontier, the development of conventional energy resources from BLM-managed lands will continue to play a critical role in meeting the Nation's energy needs and fueling our Nation's economy. In Fiscal Year (FY) 2011, onshore Federal oil and gas royalties exceeded \$2.7 billion, approximately half of which were paid directly to states in which the development occurred. In FY 2011, Tribal oil and gas royalties exceeded \$400 million with 100% of those revenues paid to the tribes and individual Indians owners of the land on which the development occurred.

The BLM is working diligently to fulfill its part in securing America's energy future. Combined onshore oil production from public and Indian lands has increased every year since 2008. Production of oil from Indian lands has increased by more than 95% since 2008. Production of gas from public and Indian lands has remained nearly stable despite increasing industry interest in development of natural gas on private lands in the eastern United States. In 2011, conventional energy development from public and Indian lands produced 14 percent of the Nation's natural gas, and 6 percent of its domestically-produced oil.

Gas production from shale formations scattered across the United States has grown from a negligible amount just a few years ago to represent a significant share of the total U.S. natural gas production, and this share is expected to increase further in the coming decades. There has also been a significant and growing increase in oil production from shale formations. Significant factors contributing to these increases include technological advances in hydraulic fracturing and horizontal drilling.

One example of this rise in production and advances in technology is dramatically evident on the Fort Berthold Indian Reservation which lies in the heart of the Bakken oil and gas region in North Dakota. At Fort Berthold, applications for permit to drill have increased from zero in 2007 to 175 in 2011. Royalty payments from production from trust minerals have increased from \$4.5 million in 2009 to approximately \$117 million last year. The BLM works closely with the BIA to help ensure that drilling and oil and gas production activities on Fort Berthold are permitted efficiently and conducted in a safe and responsible manner. BIA completes NEPA compliance, cultural and biological surveys, and development of surface mitigation measures.

Notably, on April 3, 2012, at Fort Berthold, Secretary Salazar unveiled initiatives to expedite safe and responsible leasing and development of domestic energy resources on U.S. public and Indian trust lands. As part of the BLM's ongoing efforts to ensure efficient processing of oil and gas permit applications on both Indian trust and public lands, the agency will implement a new automated tracking system across the Bureau that could reduce the review period for drilling permits by up to

two-thirds. The new system will track permit applications through the entire review process, quickly flagging missing or incomplete information, and greatly reducing the back-and-forth between the BLM and industry applicants, which is currently needed to ensure that applications processed by the BLM are complete. This initiative comes as part of the Department's efforts to continually meet increased demands for oil and gas development on public and Indian lands across the country.

Hydraulic Fracturing Technology

Recent technology and operational improvements in extracting hydrocarbon resources, particularly shale gas, have increased oil and gas drilling activities nationally and led to significantly higher natural gas production estimates for the coming decades. Hydraulic Fracturing, or "fracking," is a common technique that has been used in oil and gas production operations for decades. Fracking involves the injection of fluid under high pressure to create or enlarge fractures in the rocks containing oil and gas so that the fluids can flow more freely into the well bore and thus increase production. However, the increasing use of hydraulic fracturing has raised concerns about the potential impacts on water availability and quality, including concerns about the chemical composition of fluids used in fracturing.

The number of wells on BLM-managed public lands and on Indian lands, as well as on private lands, that are stimulated by hydraulic fracturing techniques has increased steadily in recent years as oil and gas producers are developing geologic formations that are less permeable than those drilled in the past. The BLM estimates that approximately 90 percent of the wells drilled on public and Indian lands are stimulated by hydraulic fracturing techniques.

Hydraulic Fracturing Rulemaking

In November 2010, Secretary Salazar hosted a forum, including major stakeholders, on hydraulic fracturing on public and Indian lands to examine best practices to ensure that natural gas on public and Indian lands is developed in a safe and environmentally sustainable manner. Subsequently, the BLM hosted a series of regional public meetings in North Dakota, Arkansas, and Colorado—states that have experienced significant increases in oil and natural gas development on Federal and Indian lands—to discuss the use of hydraulic fracturing on the Nation's public lands.

During the Secretary's forum and the BLM's public meetings, members of the public expressed a strong interest in obtaining more information about hydraulic fracturing operations being conducted on public and Tribal lands. Questions about the composition of the fluids that are being used were highlighted frequently as were concerns about these fluids potentially leaking into aquifers or causing spills on the surface. Additionally, the BLM recognized through review of its rules that existing regulations on well stimulation operations on public and Indian lands (last updated in 1982) needed to be updated to reflect significant technological advances in hydraulic fracturing in recent years and the tremendous increase in its use.

The BLM recognizes that some, but not all, states have recently taken action to address hydraulic fracturing in their own regulations. The BLM's proposed rulemaking is not intended to duplicate various state or any applicable Federal requirements, but rather to provide consistent protection of the important Federal and Indian resource values that may be affected by the use of hydraulic fracturing. Although the proposed rule is currently under OMB review and is subject to an ongoing deliberative interagency review process, the BLM expects to propose a rule with three key provisions:

- Disclosure of the chemicals used in hydraulic fracturing operations, with appropriate protections for trade secrets. The agency is evaluating how best to provide this information to the public and has been in touch with organizations, including the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, that run the website FracFocus.org.
- Assurance of wellbore integrity. The BLM is looking at wellbore integrity as a means to minimize the risk of fracturing fluids or other contaminants leaking into nearby aquifers.
- Water management requirements that would apply to the fluids that flow back to the surface after hydraulic fracturing has taken place. This is frequently referred to as "flowback."

Tribal Outreach and Next Steps for the Consultation Process

In January 2012, the BLM began initial outreach, communication, and information-sharing with Tribal communities on the proposed rule. The agency conducted a series of meetings in the oil and gas producing regions of the West where there is significant development of Indian oil and gas resources. Nearly 180 Tribal leaders from all Tribes that are currently receiving oil and gas royalties and all Tribes that

may have had ancestral surface use were invited to attend these meetings, which were held in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico.

In these initial meetings Tribal representatives were given a draft of the hydraulic fracturing rule to serve as a basis for discussion and substantive dialogue about the hydraulic fracturing rulemaking process. The BLM asked the Tribal leaders for their views on how a hydraulic fracturing rule proposal might affect Indian activities, practices, or beliefs if it were to be applied to particular locations on Indian and public lands. A variety of issues were discussed, including applicability of Tribal laws, validating water sources, Inspection and Enforcement, wellbore integrity, and water management, among others.

The development of this hydraulic fracturing rule will include proactive Tribal consultation under the Department's newly-formalized Tribal Consultation Policy. This policy, announced on December 1, 2011, emphasizes trust, respect and shared responsibility in providing Tribal governments an expanded role in informing Federal policy that impacts Indian lands. Under this policy, consultation is an open, transparent, and deliberative process.

The agency will continue to consult with Tribal leaders throughout the rule-making process. Responses from Tribal representatives will inform the agency's actions in defining the scope of acceptable hydraulic fracturing rule options.

Conclusion

The BLM will continue to encourage responsible energy development on public and Indian trust lands and ensure a fair return for the use of these resources. Following internal Administration review and continuing Tribal consultations, a draft rule incorporating the feedback received will be released to the public as part of a formal comment period. At that time, the BLM will be pleased to receive detailed feedback from industry, state, local, and Tribal governments, individual citizens and all other interested parties. Consultation with Tribes will continue throughout this process. I am glad to answer any questions you may have.

Mr. YOUNG. Thank you, sir. Mr. Boren?

Mr. BOREN. Thank you, Mr. Chairman. I have a couple of questions. First question right off the bat, since "Indian lands" is excluded from the definition of "public lands" in the Federal Land Policy and Management Act of 1976, what gives the BLM authority to regulate Indian lands? What gives you all the right to do that?

Mr. SPISAK. The Department follows the Indian Mineral Leasing Act of 1938 and the regulations that were promulgated from that.

In 25 CFR Subsection 225.4 is where that authority from the Indian development is covered by the BLM processes for permit application approvals.

Mr. BOREN. Let's just assume that you are right, that you do have the ability to do that. I want to talk a little bit about the collaboration, what you all have been doing.

In their testimonies, many of the tribes claim that the BLM meetings were purely informational. After reviewing the information that was made available at the meetings, I am going to have to agree that the content did not really seem consultative.

Can you describe how these meetings were collaborative in nature? Were copies of the proposed rulemaking's made available at every meeting? What were some of the tribal concerns about this specific rulemaking, and how were they addressed?

Mr. SPISAK. That is a lot. Let me start with the meetings themselves. We held the four. We tried to mirror each meeting to be the same. They started out with primarily what was hydraulic fracturing, kind of a 101 of what it is, because we understood that may be different, tribes may not have the same level of understanding.

Then we had—

Mr. BOREN. I think the BLM may not have a level of understanding. I think the tribes know a little bit more. They have been pretty proactive, but go ahead.

Mr. SPISAK. We also had a presentation from EPA at some of them. They were not able to attend at all of them. We had an engineer talking about the process and how it applied specifically in that particular region.

Then we had a session where we provided the reg text to the folks that were there, and went through the individual pieces and what they meant.

This is the first time to my knowledge where we actually provided reg text prior to it being published in a Federal Register Notice.

We wanted to make it clear that this was just the start of the tribal consultation process, and we did not believe that it was in and of itself the single time that we expected the consultation to—

Mr. BOREN. I actually have a copy of the meeting agenda. I do not see any time blocked off for review or to discuss the regulations.

In your testimony you said “Tribes were given a draft of the rule-making process to serve as a basis for discussion and substantive dialogue.”

When during the meeting did the substantive dialogue about the specific rulemaking’s occur?

Mr. SPISAK. It was the last part of the meeting where we talked about—where we handed out the reg text. I was actually at two of the meetings. I understood the other two were held the same way.

We stepped through the reg text and had a discussion about that in particular.

Mr. BOREN. I ask unanimous consent to put this in the record.

Mr. YOUNG. Without objection, so ordered.

[The meeting agenda submitted for the record by Mr. Boren follows:]

**Hydraulic Fracturing on Public Lands:
Tribal Consultation Sessions
Agenda**

DATE & LOCATION: January 10, Tulsa, OK; January 12, Billings, MT;
January 17, Salt Lake City; January 19, Farmington, NM

PURPOSE: These tribal consultation meetings build upon public meetings the Department of the Interior hosted in Washington, D.C., in November 2010, as well as regional forums in April 2010, to discuss proposed new rules governing the use of hydraulic fracturing on public lands. The meetings are part of an outreach program to tribal stakeholders to provide an opportunity for a more in-depth technical review. Among other things, the proposed rules would provide full disclosure of the chemicals used in the hydraulic fracturing process, with necessary provisions related to trade secrets claims. In keeping with the BLM's trust responsibilities, these sessions will seek tribal views regarding the potential impacts of hydraulic fracturing on trust assets and traditional tribal activities, practices, or beliefs.

PROGRAM

8:30	Registration	
9:00	Welcome and Announcements	Barney Whiteman, BLM Great Falls Field Office, Facilitator
9:15	Introductions and Opening Remarks	Steve Wells, BLM Washington Office
9:30	Tribal Concerns	Jim Stockbridge, BLM Washington Office
10:15	Break	
10:30	Overview of the Process	Jim Stockbridge
11:00	Introduction to Oil and Gas Drilling and Hydraulic Fracturing	Don Judice, BLM Great Falls Field Office
12:00	Lunch	
1:15	Discussion of Water Quality Standards	Dan Jackson, USEPA
2:15	Break	
2:30	Team Lead Presentation	Mike Worden, BLM Washington Office
3:30	Question and Answer	Facilitator
5:00	Closing remarks/summation	Steve Wells
5:30	Adjourn	

Mr. BOREN. Has feedback from consultation sessions with the tribes been incorporated into some of these draft regulations? When you all visited, have you taken some of their input?

Where are we on this time line? Can you kind of go through the time line of after this process has happened and when you see these draft regulations actually being more formalized?

Mr. SPISAK. Sure. They were transmitted over to the OMB in the middle of February. There has been some back and forth with OMB and other agencies on the regs.

It is undergoing changes as we speak based on input that we received from the tribes as well as Executive Order 12866 meetings that OMB has been conducting over the last month or so.

Those are where virtually anybody can call in for 30 minutes and provide comments and concerns that they have regarding the particular piece in question, and this would be the reg text that had been provided to the tribes in January.

Mr. BOREN. OK. Mr. Chairman, I am running out of time. I yield back. I am looking forward to the testimony from the tribes to see if there really was consultation here. Thank you.

Mr. YOUNG. I thank the gentleman. If he wishes to ask more questions in the second round, fine.

Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman. Thank you for having this hearing.

I always look at matters like this at a balance of economic development on Indian land and the unique sovereignty of Indian land.

You mentioned a law passed in 1938. When we read the Constitution and it says "Congress shall have the power to regulate commerce with foreign nations and among the several states, and with the Indian tribes," it talks about the sovereignty of Indian land.

Are we in any way impinging upon that sovereignty? You mentioned the Act of 1938. Were Indians part of the discussions or negotiations when that Act was passed? Was this just done by people here in Washington?

Mr. SPISAK. I have no idea, sir.

Mr. YOUNG. You were not born then?

Mr. KILDEE. I was born by nine years that time. I am 82 years old.

Mr. YOUNG. I was talking to him.

Mr. KILDEE. I was on the Committee, I think.

[Laughter.]

Mr. YOUNG. And we will miss you.

Mr. KILDEE. I am wondering, there are several principles involved here. It is real sovereignty. When they wrote here, our founding fathers, to regulate commerce with foreign nations and with the several states and Indian tribes, that says "foreign nations," that does not mean we grant sovereignty to France. We recognize the sovereignty, right?

Mr. SPISAK. Yes.

Mr. KILDEE. The Indians, John Marshall tells us, have retained sovereignty. It is not something we gave them. They had it long before the Europeans landed here.

How sensitive were those involved in the writing of the 1938 law to the principle of Indian sovereignty? I want to do what is right and helpful to the Indians, but we cannot just treat them as a piece of land.

They are sovereign nations with sovereign lands with all the attendant rights of sovereign nations.

I am just wondering if there was any discussion at all or has there been any current discussion about the unique status of sovereign land?

Mr. SPISAK. Well, I would not say specifically, but I know the Department of the Interior has a Trust responsibility for the development of the Indian mineral estate along with the Indians and the tribes, and we take that responsibility seriously, and that is why the regulation as it is currently drafted would cover public lands and Indian mineral estates, because of that Trust responsibility that is part of the authority under the Secretary of the Interior.

Mr. KILDEE. I would like to do some more information seeking myself. You can provide more.

I really want to do what is right for the Indians under our Constitution and among their sovereignty, which they had long before the Constitution was written.

If there is any information of how that sensitivity is in play when things like this are developed, I would be very appreciative.

Mr. SPISAK. I understand.

Mr. KILDEE. The Indians are certainly capable of determining what is a good use of their land, and they should at least be at the table as an equal, sovereign to sovereign relationship.

I would like to see how sensitive the Department is to that sovereign to sovereign relationship.

Mr. SPISAK. I would say BLM agrees with that 100 percent. Many of the tribes have become very sophisticated in their development of their own resources, and we want to work with them in that area.

Mr. KILDEE. Very good. I appreciate that, and any further information you can get for us.

I have been in Congress now 36 years. I was founder of the Native American Caucus, although my ancestors came from Ireland. I just feel we have to be very careful when we think we are doing something very good, but we might also be impinging upon something that is not cognizant of their rights of sovereign.

Anything you can do to supply more information will be appreciated.

Mr. Chairman, again, I appreciate your calling this hearing.

Mr. YOUNG. I thank the gentleman. With all due respect to the BLM, and this is not meant for you, they manage Native lands in Trust. In my estimate, they mis-spent, mis-used and frankly were very corrupt in the \$27 billion, I think, they took from the Natives in their leasing practices.

We had a legal court case that settled for \$3.5 billion.

I am not really fond of the BLM managing American Indian lands.

Mr. Spisak, you are a career officer and I realize that. I think one of the things that bothers me here today is we have some very distinguished American Indian leaders in this room, and you are a career officer.

Mr. SPISAK. Yes, sir.

Mr. YOUNG. Mr. Salazar decided not to appear or even a political appointee. I read your testimony. This hearing is about consultation.

When did the initial draft of this proposed rule begin?

Mr. SPISAK. Secretary Salazar had a listening session as it were in November 2010, where we brought in various people interested to start a discussion about hydraulic fracturing.

At that point, he had conveyed an interest in doing that. BLM then followed up with a series of listening sessions in April of 2011 that brought in more public interest.

We tried to engage the tribes to sit on the panels, and we were successful, I think, in a couple of the states, but the drafting of the rules—we did not get a clear go ahead until after that time that we started looking at putting together reg text, as it were, for hydraulic fracturing.

It was probably last Spring/Summer when it started.

Mr. YOUNG. You mentioned that Secretary Salazar hosted a forum including major stockholders on hydraulic fracking on public and Indian lands. I have a copy of the Interior meeting advisory regarding that hearing.

I do not see a single tribe leader listed as a participant. Not one. In fact, I do not even see the Bureau of Indian Affairs. I see Carol Browner. That is a winner. She was the President's radical environmental advisor.

I do not see the Natural Resources Defense Council. I see Trout Unlimited. I do not see any Natives. This is sovereign land.

I have heard this, Mr. Kildee, and I love you for bringing it up. We still treat these lands as ours. That is wrong. It is just not this Administration. I am upset with this Administration because they say, "I have your back."

We have had three big Native conferences, all political. That is all it is. If we can get enough support, and I am going to be around a while, I know that makes some of you quite unhappy. I am going to be around a while, unfortunately, Mr. Boren is not going to be with me, but maybe he can help me.

We are going to pass the American Indian Empowerment Act which gives them the right of sovereignty and self determination.

An 1938 Act, Mr. Kildee, with all due respect, they were not at the table. The American Indians were considered then—do not take offense—as inferior. That was the truth.

We get into this modern society, this equal rights and everything else, and we, the Congress of the United States, will not give them their just dues as sovereign nations.

Remember this, Carol Browner, Natural Resources Defense Council, and Trout Unlimited. That is a real winning group.

By the way, after that, did the Department invite on November 30, 2010 any of the Native tribes and who were they?

Mr. SPISAK. I do not recall—

Mr. YOUNG. They were not invited.

Mr. SPISAK. I know we did not start engaging—the BLM did not start engaging the tribes until the April listening sessions. I know there was one up in North Dakota, Bismarck, I believe, and I think there was quite a bit of tribal participation there.

The Little Rock, Arkansas one, there was not a lot of tribal—

Mr. YOUNG. They were not invited and they still invited environmental groups and Carol Browner. This was about fracking. As a sovereign nation, they have a right to make that decision, not you, not under a law that is so old, I was nine years old at that time, too. I remember a lot of things in those days. That was during the Depression. I hate to say that, it embarrasses me.

Anyway, by the way, let's go back to the Government. Did the BLM consult with the Bureau of Indian Affairs?

Mr. SPISAK. We have engaged them. I think we can say BLM is learning how to do this consultation. When I say that, I see your reaction, but the policy came out in December. We are trying to be more open in how we are providing information.

I think we can say there were some things that we certainly could have done better and we are—

Mr. YOUNG. It is not you, personally. I am trying to be nice and it is difficult sometimes.

Mr. SPISAK. I appreciate that.

Mr. YOUNG. You are part of the problem. It is just not BLM. This Administration, every Administration. I keep saying it.

This is the problem. We have Secretary Salazar, who happens to be a friend of mine. He is up here. Then you have the Park Service. Then you have Fish and Wildlife. Then you have the BLM. Then you have Minerals and Management, whatever they call it nowadays.

At the very bottom is BIA. They were not even invited. This is why, with all due respect to my good friends, we are screwed up. Either we change that pecking order or we pass our bill that gives them the right to do what they wish to do on their land.

Remember as I said in my opening statement, you have a check-board agreement, and you pass these regulations under what you have now, here is a square, part of the reservation, the oil companies are not going to go there. They will go next door.

Where is the Indian tribe? With 80 percent unemployment and no money, no way to take care of themselves. That is not fair.

I am just saying this is our fault, not your fault. Congress has to act to create sovereign self determined tribes. If we do that, we are in good shape. If we do not do it, shame on us.

This has been going on—I have been here 40 years. I have watched this, oh, we are going to take care of you. That is the problem. When someone tells you they are going to take care of you, be careful. Check your shoes and your shorts because you are going to lose both of them.

My time is up. Do you have any more questions?

Mr. BOREN. One more, Mr. Chairman. Thank you. We have a letter here from NCAI, they had written a letter to Secretary Salazar. They go through the towns again, Tulsa, Oklahoma, just outside my District, Billings, Montana, Salt Lake, Farmington, New Mexico.

Many of the tribal leaders did not know about these events until after they occurred.

From what I have been told, you talked about the reg text being available—from what I have been told, only one of these meetings the actual text was passed out. I am not sure if that is correct.

Were they passed out at all four?

Mr. SPISAK. Yes, sir. All four.

Mr. BOREN. All four. But they were at the end of the meeting.

Mr. SPISAK. At the end of the meeting. It was not here is the text, we will see you later. It was here is the text, let's talk about it.

Mr. BOREN. You believe there was proper consultation?

Mr. SPISAK. I believe we initiated consultation.

Mr. BOREN. Initiated consultation. I am not going to say anything. Never mind. I will not say it.

The other question I have or the only comment I have is you know, when you have consultation—I have heard from so many tribes that have gone through—whether it is the BLM, you name the agency. These agencies come in and they say OK, we are going to have consultation.

They take a tribal chief, a Governor, a chairman, and they put them in a room and they make them watch a slide show for five minutes and they say thanks a lot.

We hear that over and over and over again. When you go back to the folks within the BLM, let them know consultation is not five minutes. It is not ten minutes. It is listening. That is the biggest thing—politicians have a real hard time using that.

The most important thing we can do in Indian Country is to listen. For all the agencies, not just you all, but everyone else that is thinking about drafting regulations, let's go to Indian Country

first, not to some of these other folks that have nothing to do with it, that do not understand hydraulic fracturing.

Hydraulic fracturing has been around for decades. It did not just happen in the last couple of years because of shale.

I have been around this industry for a long, long time. There have been literally over a million wells drilled without a problem. For some reason, there are a lot of groups that are searching for a problem because we have some people getting jobs in Indian Country and great things are happening.

Anyway, I look forward to the next panel. Mr. Chairman, I yield back.

Mr. YOUNG. Mr. Kildee?

Mr. KILDEE. Just one follow up. Having been a teacher most of my life, a politician probably more, but knowledge is power. When you have any consultation with people and at the end of the meeting you pass out something and say here's some further information, you have to share that knowledge.

I really think there is a culture in much of the Executive Branch of Government, including the BLM, a culture of where they treat the Indians as if they are not equals at that table.

In my 36 years here in Congress, I have been fighting that. It is still here. You were thrown into that culture. That culture has taken years to build. We are trying to change that.

We recognize that sovereignty is really sovereignty.

I went over to a resignation party of Kim Teehee who used to work for me in the Native American Caucus. There has been some improvement over there, but I think there is an idea that this sovereignty is not quite like other sovereignty.

The Constitution is very clear. I think to have a meeting and then toward the end of a meeting say oh, you might want to do this reading on your plane ride home, you should share that information from the beginning. Treat them as the equals they are.

Again, it is the culture that exists in the Executive Branch of Government, and the BIA and BLM. I think you have an opportunity to try to change that culture.

The three of us here, we have tried to change that culture.

Thank you, Mr. Chairman.

Mr. YOUNG. Thank you, sir. Like I say, this is a long haul because it is a bureaucracy.

Mr. Spisak, you also mentioned Pavilion, Wyoming and the EPA. They hailed a study they made in Pavilion as exclusive proof, EPA, and those that oppose fracking. By the way, those that oppose fracking oppose any type of drilling, any type of development of energy.

They do not understand like the Ranking Member said, this has happened for a long while.

After the Congress and the media and oil and gas industry and the State of Wyoming and other people started looking at it, the agency's study was flawed. It was flawed. In fact, they are coming back now with some additional studies.

I will say one of our biggest concerns, if you really want to do something good for fracking to meet everybody's requirement, think about this a moment, not just Native lands and not somebody else's land.

There is technology to reuse the water. That is one of our biggest problems. Some company is already doing it. I think that is a justifiable requirement, reusing the water, not just dumping the water. Water is going to be our scarcest commodity in the future.

You might want to look at that. The technology is there. Some companies are using it. Some are not. It is cheaper to not reuse the water. It does reduce the cost of fuels and it is still worthwhile for everybody. That is something you might want to look at instead of just saying no, it is damaging, it is hurting everybody, the world is coming to an end.

I can tell you, in fact, we are fracking in Alaska now. Every one of those wells were put in as new pipe or new concrete, new ceilings. There is no chance of losing or having any contamination. That would solve some of our problems, too.

I appreciate your testimony, Mr. Spisak. Congratulations on your career work.

I still think that the Secretary should have had his tail down here.

Mr. SPISAK. Thank you.

Irene Cuch, Chairwoman, Ute Indian Tribe Business Council. T.J. Show, Chairman, Blackfeet Tribal Business Council. Mike Olguin, Vice Chair, Southern Ute Indian Tribal Council, and Red Tipped Arrow Hall, Chairman of the MHA Nation—Three Affiliated Tribes.

Thank you. I am going to reverse this order a little bit.

Tex, you are going to be up first.

**STATEMENT OF TEX "RED TIPPED ARROW" HALL, CHAIRMAN,
MHA NATION—THREE AFFILIATED TRIBES**

Mr. HALL. Thank you, Mr. Chairman, members of the Committee. For the record, my name is Tex Red Tipped Arrow Hall, Chairman of the Mandan, Hidatsa and Arikara Nation on Fort Berthold Reservation in Western North Dakota.

I want to just summarize so there is more time for questions and answers later. I will summarize a little bit about the development and then I will give about five or six recommendations that we have as a tribe.

We are in the middle of the Bakken. USGS says 4.3 billion recoverable barrels. We know it will probably be double. We do have about 275 producing wells on Trust land, and about 450 total, including fee on Fort Berthold, without one incident of any problems with hydrofracking.

I want to also mention that hydrofracking is a method that is needed to break the shale. It is about a million gallons of water, sand and some chemicals that are used to break the shale.

We have deep water wells a mile deep, and then we do a horizontal lateral. You can either do a short lateral half a mile or you can do a mile long lateral. You can do a multi-stage frack.

Companies are not required to disclose the ingredients. We are in favor of requiring companies to disclose.

However, we are not in favor of requiring a rule that we never had any consultation whatsoever.

We are in the middle of the Bakken. It is the biggest oil place in the U.S. Bakken is not in Farmington. It is not in Billings. It is not wherever else.

I thought he was going to stay here, too. It is the first time I saw anybody from BLM and he left out the door.

You know, I do not appreciate that. We did the math. If they require another permit, if "they," BLM, requires another permit, that will be an additional delay.

We have been a guinea pig. We have gone through boxes and boxes of leases that the BIA could not sift through. We have sifted through it. We got additional staff. We got through that.

Now the Communitization Agreements were backed up by BLM at Dickinson. We thought we had a good Director. The Director is gone. There is no Director in Dickinson at BLM.

We have never had any discussion about what this guy was talking about to you guys. He never talked to me once. March 26, there was nobody of any kind of authority that came out to meet with tribes on March 26. It is like they are afraid to talk to tribes.

You know these lands are Indian lands for the Mandan, Hidatsa and Arikara. These are our lands. They are not BLM's lands. These are not public lands.

Our 1851 Fort Laramie Treaty, that is why I was hoping he would listen, maybe he will read our testimony, that Treaty is set aside for the use of our Indian people. It is not set aside for BLM. The Treaty is supposed to be the supreme law of the land, Representative Kildee, is that not right?

What happened to this thing? This thing has gotten out of control. If it is not EPA, not it is BLM.

Anyway, getting back to the economics. It would cost us \$10,000 a day for over 100 wells, that is \$132 million it will cost Fort Berthold.

We are 75 percent of all the oil and gas and royalty production in the U.S. right now. That is why I am talking the way I am. That is why I do not like it when they do not listen and they get up and ignore us. That is disrespectful. It should be unlawful. He should be reprimanded.

Anyway, getting back to this consultation. Does BLM have a public lands' responsibility or a Trust responsibility? He said he had a Trust responsibility. If he did, he would have to follow the Executive Order, and he admitted to it. I listened closely. "Initial consultation" I think is what he said.

There are various steps. We have objected from day one. We have not heard back from him or Secretary Salazar on our objections of what this would cost Fort Berthold. They haven't said nothing to us, but I have heard through the newspapers that we have been consulted. That is a bunch of baloney.

BLM is not a friend of the Bakken, I can tell you that. They are here to destroy the Bakken. The Bakken is a good thing for the United States. It is a good thing for MHA Nation.

This Executive Order, if he does have a Trust responsibility, he needs to follow his own Secretary Salazar's Executive Order.

A tribe should have the authority to object like we did, then you have to sit down with them, do not have them go to Farmington or Billings or whatever city.

If you look at the information, it is all about public lands. The tribes were an afterthought. Again, he admitted to it on the agenda.

Over and over, he has admitted to their own blunders, finally, after your hearing, Chairman Young. It took your hearing for us to get that out of BLM. Otherwise, they were not going to disclose that.

Second, on the authority, I do not believe they have the authority. We have researched the Federal Lands Management and Policy Act, Ranking Member Boren, as you indicated, 1976 on. There is no authority. That is why they keep putting us as public lands.

Now our permits at Fort Berthold, people from New York, people from Pennsylvania can make public comment on a permit or maybe a hydraulic fracking permit.

We are going to get people that are not even from North Dakota, going to all object to energy development, and we are soon going to be in Alaska. We are going to be number two, Chairman Young.

My recommendation is that they withdraw this fool hearted rule that they never consulted after he admitted to it today, and go back and give a year or two years, I would recommend two years, to get the consultation right. If they do not get the consultation right, I do not know how we can sit down at the table with BLM or any other Federal agency and have meaningful dialogue.

We will know what they say on paper and what they actually do are two different things.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hall follows:]

**Statement of The Honorable Tex G. Hall, Chairman,
Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation**

Good morning Chairman Young, Ranking Member Boren and Members of the Subcommittee. My name is Tex Hall. I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation). I am honored to present this testimony on the BLM's proposed regulation of hydraulic fracturing.

I. Introduction

Every time I turn around the MHA Nation must overcome yet another barrier to Indian energy development. Today's barrier is the BLM's proposed regulation of hydraulic fracturing used in the development of oil and gas resources. The BLM proposes to require an additional review and approval loop in what the Subcommittee has already found to be an overburdened regulatory process for developing Indian energy resources.

Over the last four years, MHA Nation and the Reservation have been in the middle of the most active oil and gas play in the United States. The Fort Berthold Reservation is located in the heart of the Bakken Formation, which is the largest continuous oil accumulation in the lower 48 states. In 2008, the United States Geological Survey estimated that the Bakken Formation contains between 3 billion and 4.3 billion barrels of oil.

MHA Nation is actively promoting the development of our energy resources. This country has an energy problem and we want to be a part of the solution! Our resources provide us with a substantial opportunity to ensure that our members have good jobs, can heat their homes and provide for their families. Our resources also add to this Nation's domestic energy supplies. Our goal is to continue to develop our resources in a responsible manner that will maintain our homelands and provide long-term economic security for our Reservation communities.

Since energy development began on the Reservation we have struggled with the federal bureaucracy for every single oil and gas permit. We now have about 250 wells in production and the MHA Nation and Fort Berthold Allottees have earned about \$182 million in oil and gas royalties. In addition, we have 905 vendors providing services directly to the oil and gas industry. Each of those vendors employs

between 4 and 24 people. Based on an average employment of 12 jobs per company, that is in excess of 10,000 jobs.

In 2012, we expect more wells to be drilled on the Reservation than were drilled in the first four years combined. In 2013, we expect another 300 wells to be drilled. This energy development will result in hundreds of millions in royalty payments and economic activity. The BLM's proposed regulations stand in the way of that energy and economic development and will limit energy and economic development on the Fort Berthold Reservation.

It is important to note at the outset, that the BLM developed its regulations, which will have a tremendous impact on the development of Indian energy resources, without anything close to meaningful tribal consultation. This violates the Department's four month old "Policy on Consultation with Indian Tribes" (December 2011). What BLM has done to date, does not even come close to the "strong, meaningful role for tribal governments at all stages of federal decision-making on Indian policy" that the Department of the Interior promised when it announced its new tribal consultation policy. Press Release, Department of the Interior, "Secretary Salazar Kicks Off White House Tribal Nations Conference at Department of the Interior" (Dec. 2, 2011).

My testimony examines BLM's failure to comply with the Department's tribal consultation policy and sets out the requirements for consultation. In addition, I will discuss some of the problems with the proposed regulations and the impact the proposed regulations will have on energy development on the Fort Berthold Reservation.

II. BLM Must Withdraw the Proposed Regulation Until Meaningful Tribal Consultation has Occurred

The Bureau of Land Management (BLM) is developing a regulation for hydraulic fracturing activities that will have significant impacts the oil and gas resources being development on the Fort Berthold Reservation. Our industry partners report that BLM's proposed regulations may add so much delay, uncertainty and cost to the oil and gas permitting process that they may be forced to pull their drilling rigs off the Reservation. These rigs would likely end up developing oil and gas resources just over the Reservation boundary on state and private lands.

Since BLM has not fulfilled the Department's and the Administration's requirements for consultation with Indian tribes, BLM must withdraw the draft hydraulic fracturing regulations from the Office of Management and Budget (OMB) or should exclude the application of these regulations to any permits on Indian lands until proper and meaningful consultation with tribes can occur. In addition, the Department's Tribal Governance Officer (TGO), the Assistant Secretary for Indian Affairs and BLM should work with tribes to develop an appropriate consultation protocol and timeline for the development of any regulations that may be needed for this issue.

Tribal consultation requirements are not just a formality. Tribal consultation is based on the long-standing government-to-government treaty relationship between Indian tribes and the federal government. This relationship requires consultation with tribal governments when federal actions will affect Indian resources. The purpose of consultation is to allow the two governments to engage in collaborative decision-making, promote tribal self-determination, and avoid costly mistakes. Tribal consultation is also an exercise of the federal government's trust responsibility to Indian tribes.

The Department of the Interior's Policy on Consultation with Indian Tribes (Tribal Consultation Policy) requires that the BLM structure a consultation process to allow "timely input" from tribes and which will enable BLM to work with tribes as "collaborative partners." Tribal Consultation Policy § VII.E.2. The policy states that, "[c]onsultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility." Id. § II.

Because of the severe impacts the proposed regulation will have on the MHA Nation's and other tribe's resources, BLM is required to follow the "Stages of Consultation" set out in the Department's Tribal Consultation Policy in the development of any hydraulic fracturing regulations. These stages include an "Initial Planning Stage," a "Proposal Development Stage," and an "Implementation of Final Federal Action Stage."

As described in detail below, BLM has only begun to meet the requirements of the Initial Planning Stage even though BLM already submitted its draft regulations for review by OMB—generally the last step before publication in the Federal Register. BLM's tribal consultation actions to date consist of four January 2012 Re-

gional Tribal Consultation meetings and a few follow up meetings with individual tribes. This is not what the Department's tribal consultation policy requires. This is just the beginning of tribal consultation. At this stage, BLM should not have draft regulations pending at OMB.

In addition, I believe that BLM must take proactive steps to correct its failure to comply with the Department's Tribal Consultation Policy and its federal trust obligations. This is particularly needed because BLM has already provided the draft hydraulic fracturing regulations to OMB. BLM's actions to date have given me and other tribes the impression that tribal input is not desired or only minimally needed even though there is strong evidence that the proposed regulations will cost the MHA Nation and the surrounding community a sizable number of jobs and money.

I ask that the Department enlist its TGO to monitor BLM's actions as it develops an appropriate consultation protocol and restarts tribal consultation. Throughout the consultation process, the Department's policy directs the TGO to facilitate government-to-government consultation, to implement a reporting system to ensure that consultation efforts are documented and reported to the Secretary, and to fulfill other TGO obligations under the Department's policy. Tribal Consultation Policy §VII.B.1(a)-(g).

In this case, the resulting consultation protocol should clarify that BLM is prepared to: (1) withdraw the draft regulations from OMB or excluded permits on Indian lands from the proposed regulations, (2) work with tribes to develop a consultation timeline, (3) engage tribes in the Initial Planning Stage and the other two stages of consultation, and (4) generally set out the steps that BLM will follow to comply with the Department's Tribal Consultation Policy and other consultation requirements.

A. Initial Planning Stage

During the Initial Planning Stage, BLM is directed to involve tribes "as early as possible" and provide enough information to enable tribes to fully engage and assist in the development of regulations that will affect tribal resources. Tribal Consultation Policy §VII.E.1. This early stage should be informative as BLM identifies and describes the issue it believes needs regulation and it must also include a meaningful dialogue in which BLM considers tribal views on the issue, the need for regulation and, most importantly, alternatives for addressing the issue. Based on my review of BLM's actions to date, BLM has only begun to comply with the requirements of the Initial Planning Stage of the Department's Tribal Consultation Policy.

As an initial matter, the April and November 2011 Regional Public Forums in Bismarck, North Dakota, Little Rock, Arkansas, Denver, Colorado, and Washington, D.C. were not part of the tribal consultation process—as BLM asserted in meetings with tribes. These meetings were advertised to the general public, were not directed to tribal leaders, and were purely informational. These are not tribal consultation sessions on a government-to-government basis, do not provide opportunities for tribes to discuss their concerns and propose solutions, and should not be represented by BLM as part of the tribal consultation process.

The January 2012 Regional Tribal Consultations in Tulsa, Oklahoma, Billings, Montana, Salt Lake City, Utah; and Farmington, New Mexico could be considered a beginning to tribal consultation, but on their own, they do not fulfill the Department's Tribal Consultation Policy. These meetings were purely informational. The BLM made no attempt at these meetings to involve tribes in determining the scope of the issue, offer tribes an opportunity to participate in drafting the regulations, or engage tribes in a discussion of alternatives to federal regulation.

BLM's failure to involve tribes early in the regulation development process violates basic tribal consultation principles. For example, Executive Order No. 13175 requires that agencies, "consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes." Exec. Order No. 13175 §3(c)(3) (Nov. 9, 2000). BLM never consulted with tribes on the need for hydraulic fracturing regulations, on the staffing and other steps which would be required to implement those regulations on Indian lands, or on preservation of tribes' authority to regulate the issue themselves. By not involving tribes, BLM has developed a regulation that is likely to limit energy development on the Fort Berthold Reservation and cost us needed governmental revenues.

Based on these actions and according to the Department's own Tribal Consultation Policy, BLM is still in the Initial Planning Stage of tribal consultation. Consequently, BLM's draft regulations needs to be withdrawn from OMB or permits on Indian lands should be excluded from the regulation until BLM has complied with the policy. Allowing the draft regulation to be published in the Federal Register before initial consultation stages are completed would violate the Administration's and

the Department's tribal consultation policies and leave tribes and the federal government with a costly new set of federal requirements that they are unprepared to implement.

B. Proposal Development Stage

Without fully initiating or completing the Initial Planning Stage, BLM is attempting to skip ahead and quickly complete the Proposal Development Stage with little to no tribal involvement. Contrary to BLM's actions, the Department's Tribal Consultation Policy requires BLM to work with tribes at the beginning of the Proposal Development Stage to establish a timeline for the consultation process. The Tribal Consultation Policy also requires BLM to work with tribes as "collaborative partners." This collaboration is critical because tribes are already facing regulatory requirements that the federal government is not capable of implementing in a timely manner.

First, at the start of the Proposal Development Stage, BLM is required to work with tribes to develop an appropriate schedule for the consultation. This is necessary in order to allow tribal officials and staff the time to analyze the issues and prepare meaningful ideas. The Tribal Consultation Policy specifically states that:

The Bureau or Office shall develop a process. . . that maximizes the opportunity for timely input by Indian Tribes and is consistent with both Tribal and Bureau or Office schedules. The Bureau or Office will solicit the views of affected Indian Tribes regarding the process timeline to consult on a Departmental Action with Tribal Implications. The Bureau or Office should work with Indian Tribes to structure a process, to the extent feasible, that considers specific Indian Tribal structures, traditional needs, and schedules of the Indian Tribes. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Indian Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent. . . .

Tribal Consultation Policy §VII.E.2. BLM has not developed the required consultation process or timeline with tribes.

Hydraulic fracturing and the potential impact of the proposed regulations on tribal resources, Indian energy and economic development are significant—especially in areas of high demand for oil and gas resources like the Fort Berthold Reservation. A regulation of this magnitude requires a more extensive timeline and process to fully engage tribes in the development of draft regulations. To comply with the Department's Tribal Consultation Policy during the Proposal Development Stage, BLM needs to develop a consultation timeline with tribes that takes into account the level of impact, the scope, and the complexity of the issues involved. To date, this has not happened.

Second, the Proposal Development Stage requires that BLM work with tribes as collaborative partners. While the January 2012 Regional Tribal Consultations included disclosure of the Department's proposed action, BLM did not involve the MHA Nation or other tribes as collaborative partners or engage tribes in a meaningful dialogue about the substance of the regulations. These meetings were merely informational.

For example, BLM arrived at two of the four meetings with draft regulations already completed. Given our government-to-government relationship, and our first-hand knowledge of the industry, BLM should not present tribes with completed regulations at this stage, rather BLM should work with tribes to develop the regulations from the ground up. We know what works on our Reservations, BLM does not. BLM also did not engage tribes in a meaningful dialogue about the substance of the regulations. Of course, this would have been difficult as tribes were not provided an opportunity to review the regulations ahead of the meeting.

Moreover, soon after the January 2012 Regional Tribal Consultations, BLM submitted its draft regulation to OMB for review. OMB review is typically the last step before publication of a draft regulation in the Federal Register. BLM's actions foreclosed meaningful consultation and did not provide any opportunity for collaboration with tribes on how to accomplish federal goals in the most efficient and cost effective manner.

After extensive efforts to contact BLM, the MHA Nation and a few tribes met with BLM in Washington, D.C. on March 26, 2012, to discuss the lack of tribal consultation and finally provide some feedback to BLM on the draft regulations. This meeting represented the first time that BLM and tribes were prepared to have a dialogue on the draft regulations. Unfortunately, because of BLM's actions to date, the majority of the meeting was spent discussing the lack of tribal consultation. To-

wards the end of the meeting, there was a little time for tribes to provide some comments on the details of the draft regulations, but there was no substantive exchange of information, no development of the required consultation timeline, and no discussion of ideas and concerns about the practical problems that these regulations present.

The Department's Tribal Consultation Policy also requires that tribal consultation be conducted with Departmental officials who are knowledgeable about the matters at hand, are authorized to speak for the Department, and can exercise delegated authority in the disposition and implementation of an agency action. Tribal Consultation Policy §II. In contrast, BLM officials who attended the March 26th meeting made clear throughout the meeting that they could only listen to tribal suggestions, could not provide any responses during the meeting, and would need to discuss any responses with their superiors. Similarly, BLM's suggestion that tribes meet with their local Field Offices for consultation does not comply with the Department's Tribal Consultation Policy since BLM has made no indication that the local Field Offices are authorized to speak for the Department or exercise delegated authority. BLM "Dear Tribal Leader" letter (Dec. 9, 2011).

Finally, it is not the responsibility of the MHA Nation or other tribes to seek out meetings to discuss the contents of a draft regulation. The BLM is required to comply with the Department's Tribal Consultation Policy on its own initiative when proposing to develop regulations that will affect tribal resources.

C. Implementation of Final Federal Action Stage

The Department's Tribal Consultation Policy includes a third stage regarding a post-consultation review process. While this third stage is not mandatory, its inclusion in the Department's Tribal Consultation Policy suggests that these efforts are encouraged, support the federal trust responsibility, and would result in more effective Departmental actions and regulations. If BLM eventually decides that a hydraulic fracturing regulation that includes Indian lands is needed, BLM should include an Implementation of Final Federal Action Stage in its consultation process.

Given the complexity of hydraulic fracturing, the fact that multiple agencies are already involved in the on-reservation drilling permit approval process, the magnitude of potential impacts to tribes and the need for adequate BLM staff to oversee any regulatory process, post-consultation review and training is likely to be needed. As you know, BLM already lacks the staff necessary to implement its current regulatory scheme in a timely manner, and these new regulations will simply add to that backlog, unless proper planning, with full tribal involvement, is undertaken.

D. Summary

BLM skipped most of the Initial Planning Stage of the Department's Tribal Consultation Policy and is not complying with the requirements of the Proposal Development Stage. Consequently, BLM must withdraw the draft hydraulic fracturing regulations from OMB or should exclude the application of these regulations to any permits on Indian lands until proper and meaningful consultation with tribes can occur. Also, the Department's TGO, the Assistant Secretary for Indian Affairs and BLM should work with tribes to develop an appropriate consultation protocol and timeline for consultation on the development of any hydraulic fracturing regulation. This is a basic level of consultation and it is needed here to avoid impacts on the Reservation economy.

In sum, BLM must restart its consultation process to properly engage tribes. If BLM does not take these steps, BLM's proposed regulations on hydraulic fracturing would be developed in violation of the Department's four-month old Tribal Consultation Policy. This policy was developed, in part, to ensure early planning, involvement of tribes, and avoidance of negative impacts. BLM's consultation to date is nothing like the meaningful role in federal decision-making promised to tribes when the consultation policy was announced.

III. Problems with the Proposed Regulation and Impacts on Energy Development

After many years of economic hardship, the MHA Nation and its members are finally seeing improved economic conditions due to the oil and gas development on the Reservation. BLM's proposed regulation of hydraulic fracturing activities would disproportionately impact the MHA Nation and its members due to our reliance on oil and gas development for economic growth and sustainability.

Time is of the essence. I ask that the Subcommittee and Congress take any actions that are available to prevent BLM from implementing its proposed regulations in order to save domestic energy production and desperately needed jobs and economic opportunity in Indian Country. I have already testified before the House Committee on Appropriations' Subcommittee on Interior, Environment and Related

Agencies that Congress should prohibit federal dollars from being used to implement the proposed hydraulic fracturing regulations until a number of prerequisites are met. These prerequisites are:

- As described above, the BLM needs to follow the Department's own tribal consultation policy;
- The Environmental Protection Agency (EPA) must complete its study on hydraulic fracturing that the full House Appropriations Committee requested in its FY 2010 budget report and Indian tribes must be given an opportunity to review and respond to EPA's study;
- BLM needs to develop a staffing and implementation plan to ensure that its review and approval of hydraulic fracturing plans will not add to the already unreasonable delays that tribes face in trying to get oil and gas permits approved on Indian lands;
- BLM should be required to request and receive the funding necessary to fill staff positions, and to complete the hiring and training of those individuals, before it is allowed to implement these types of new regulations;
- BLM should be required to demonstrate that it has an adequate process in place to ensure that there is no duplication of existing requirements for on-reservation permits to drill; and,
- BLM should develop an implementation plan that will phase in hydraulic fracturing requirements over time, as the federal agencies and the oil and gas industry working on our reservations become familiar with these new demands.

These are common sense requirements for the development of any federal regulation. Rather than follow this logical procedure, BLM officials have stated that they developed the proposed regulations in response to "public outcry." I ask that the federal government, and the MHA Nation's federal trustee, follow a more deliberative and substantive process, like the one outlined above, in developing regulations that will have economic consequences on the MHA Nation. In the remainder of my testimony, I will highlight a variety of problems with the BLM's proposed hydraulic fracturing regulations.

First, I can find no authority for the BLM to regulate activities on Indian lands, including hydraulic fracturing. Although the BLM has jurisdiction to regulate activities on "public lands," Indian lands are not public lands. Indian reservation lands are set aside and reserved for the exclusive use and benefit of Indian tribes. Neither the Federal Land Policy and Management Act of 1976 nor the Department of the Interior's Departmental Manual provide BLM with direct or delegated authority over Indian lands.

If the BLM has somehow assumed authority over Indian lands, the BLM may not, consistent with the trust responsibility, apply public interest standards to Indian lands. In contrast to oil and gas development on public lands, royalties and taxes from oil and gas production on tribal and allotted lands on the Reservation are a significant source of revenue for our tribal government and income for allottees on the Reservation. Adding additional burdens for the development of oil and gas on the Reservation could chill production and force operators to shift investment away from our Reservation to state and private lands where the regulatory burden is less onerous. The Tribe requests that the Subcommittee and Congress pass legislation that would prevent Indian lands from being swept into laws and policies for public lands.

Second, I am not aware of any incidents on tribal lands, or for that matter public lands, that would precipitate federal regulation. While federal regulation of shallow gas wells in Wyoming and Pennsylvania may be justified to protect ground water, I see no such justification for deep horizontal wells like those that are drilled on the Fort Berthold Reservation. The wells drilled on our Reservation and the hydraulic fracturing activities take place far below the water table. Without proof that these rules are necessary to protect against an identified threat to the environment, deep well fracing on the Reservation should be exempt from the additional regulatory burdens that the proposed BLM regulations would impose.

Of course, I am also greatly concerned about the environmental health of the Fort Berthold Reservation. The MHA Nation cannot just pick up and move to another reservation if our lands or waters are spoiled. This is my home and I work every day to ensure that we maintain our natural resources for many generations to come. All I ask is that any regulation be based on sound science, as opposed to public outcry, and developed consistent with the federal trust responsibility as opposed to public interest standards.

Third, the BLM already lacks the staff to keep up with existing permitting requirements, let alone a new and complicated one. It already takes 5 to 20 times longer to get an oil and gas permit on Indian lands. On the Fort Berthold Reserva-

tion, we just got done clearing the backlog of Communitization Agreements when we lost the Director of our BLM Field Office. Now, Communitization Agreements are starting to pile up again while the BLM is proposing to create additional work for its short-staffed offices.

Fourth, oil and gas operators seeking permits for oil and gas activities on Indian lands already undergo an extensive environmental review process. BLM has not explained what its proposed hydraulic fracturing regulations will add to this process. The process is already lengthy, time consuming and costly. These delays and costs are one of the primary reasons why oil and gas developers look just over the Reservation boundary for cheaper and quicker development opportunities on private lands. We need to remove road blocks to Indian energy development, not increase them.

Fifth, as noted above, federal studies of hydraulic fracturing activities are still ongoing. The EPA and other federal agencies are currently conducting scientific studies on hydraulic fracturing. BLM's proposed regulations are premature in advance of the EPA study, and BLM has offered no justification for proceeding with this new regulation without the benefit of these studies.

Sixth, economic impacts on the MHA Nation will be significant. The MHA Nation has been using revenues from oil and gas development to successfully reduce its governmental debt and provide the physical and governmental infrastructure to support economic development. If the BLM's new hydraulic fracturing regulations create a disincentive for companies to develop energy on the Reservation, the MHA Nation would suffer a disproportionately greater impact than others.

For example, based on an 18% tribal royalty rate, a single oil and gas well provides our tribal government with more than \$2 million per year in revenues to fund government functions. Multiply this by 100 or 200 wells producing tribally owned minerals and the numbers are staggering. While we do not have this many wells producing from tribally owned minerals yet, these kinds of numbers are not far off. The MHA Nation will not receive these revenues if companies are forced to pull drilling rigs off the Reservation for cheaper and more certain development opportunities on state and private lands.

IV. Conclusion

I want to thank Chairman Young, Ranking Member Boren and the members of the Subcommittee for the opportunity to testify on the BLM's proposed hydraulic fracturing regulations. Unlike the public lands that are clearly within BLM's authority to regulate, the application of the regulations to Indian lands will have a direct effect on the MHA Nation's revenues, our ability to invest in the future, and the services we are able to provide our members and future generations. The MHA Nation stands ready to work with the Subcommittee and the BLM to find an appropriate resolution.

At the appropriate time, I would be happy to answer any questions you may have. Thank you.

Mr. YOUNG. I want to thank you for your comments. Do you have to leave? It is the reason I picked you up. If you do not have to leave, you can sit there and wait. It is up to you. Which one do you want to do?

Mr. HALL. I will wait for a little while.

Mr. YOUNG. OK. Good. Next is Irene.

Good to see you again, Irene.

STATEMENT OF IRENE CUCH, CHAIRWOMAN, UTE INDIAN TRIBE BUSINESS COUNCIL

Ms. CUCH. Same here. "Maiku" means "Greetings" in Ute. Good morning, Chairman Young, Ranking Member Boren and members of the Subcommittee.

My name is Irene Cuch. I am the Chairwoman of the Ute Indian Tribe. Also, at this time I would like to introduce Manuel Myore, who is our Energy and Minerals Department Director. Manuel? Our oil and gas land man, and Ronnie Wilson, our Ute Tribal attorney.

I thank you for the opportunity to testify on the Bureau of Land Management's proposed fracking rule.

I am very concerned about the impact the rule will have on energy development on my reservation. My concern with the BLM rule should not be confused with lack of concern for the environment, water, or the health of the tribal members.

The reservation is my home, and the tribe knows the value of protecting our natural resources.

As I have explained in prior testimony to the Subcommittee, the tribe is a major oil and gas producer. We produce about 45,000 barrels of oil a day and about 900 million cubic feet of gas per day.

The tribe relies on these resources as a primary source of funding for our tribal government. We govern and provide services on the second largest reservation in the United States.

Despite our progress, the tribe's ability to fully benefit from its resources is limited by the Federal agencies overseeing oil and gas development on the reservation.

The companies who operate on the reservation tell the tribe that the Federal oil and gas permitting process is their single biggest risk factor.

The BLM's proposed fracking rule will increase these risks and further limits the tribe's revenues. It would be impossible for me to tell you about all the problems with BLM's proposed rule in five minutes.

I will focus on some of the most important problems. First, Indian lands are not public lands. Our reservation is for the exclusive use and benefit of the Ute Indian tribe.

The BLM's role in overseeing permitting on the reservation should be in fulfillment of its Trust responsibility to the tribe and no one else.

Instead, the BLM developed a public interest rule and wants to apply it to my reservation.

At a meeting in Washington, D.C., BLM officials told tribes that they developed the rule in a response to public outcry. BLM should not apply public interest standards to Indian lands.

Congress already passed a law telling BLM not to do this. BLM's organic act, the Federal Land Policy and Management Act of 1976, defines what are public lands and excludes Indian lands from this definition.

This make sense when you think about it. We live on our lands. BLM rules might make sense for public lands but not the tribe lands.

We have bills to pay. We rely on our oil and gas resources to fund our government, provide services to members, and invest in our economy.

Second, the tribe has been in the oil and gas business for a long time, and I have not heard of any incidents that would require new Federal regulations for the wells on my reservation.

Third, as I have testified before, the Federal agencies overseeing permitting already have too much to do and not enough staff.

On our reservation, there is a backlog of hundreds of permits. The additional delay caused by BLM's fracking rule will have a big economic impact on the tribe.

Currently, a single drilling rig completes about 20 wells a year on the reservation. If permitting becomes unreliable, companies will move their rigs off the reservation for state and private lands.

The loss to the tribe from a single rig leaving the reservation is about \$16 million over a 12-month period.

To summarize other problems with the rule, it seems like BLM developed it without talking to anyone involved in the oil and gas development process. Many of the BLM's requirements simply will not work.

I can tell you this, BLM never discussed its rule with my tribe. They should have. The tribe is a major domestic energy producer. We own our own energy company and we oversee development of the reservation with our own energy and minerals department.

In fact, the Department's own policy requires that BLM consult with the tribe on actions affecting our resources. Just four months ago, the Department said its new tribal consultation policy would provide a strong meaningful role for tribal governments at all stages of Federal decision making on Indian policy.

The BLM did no such thing. By the time BLM invited tribes to a meeting, the whole purpose of the meeting was to tell the tribes what BLM had already decided to do.

BLM needs to postpone its rule and restart its consultation with tribes.

I would like to thank you for the opportunity to present this testimony on behalf of the Ute Indian Tribe. Thank you.

Again, I would just like to repeat what Chairman Tex Hall just said about Mr. Spisak, that he left the room. He should have stayed here, I believe.

Congressman Kildee, he did say listening is part of the consultation, and he should have stayed here to listen to us.

Thank you again.

[The prepared statement of Ms. Cuch follows:]

**Statement of Irene C. Cuch, Chairwoman, Ute Tribal Business Committee,
Ute Indian Tribe of the Uintah and Ouray Reservation**

Chairman Young, Ranking Member Boren, and Members of the Subcommittee on Indian and Alaska Native Affairs, my name is Irene Cuch. I am the Chairwoman of the Ute Tribal Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe). The Ute Indian Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre. Our Reservation is located in north-eastern Utah. Thank you for the opportunity to provide this testimony on the Bureau of Land Management's (BLM) proposed hydraulic fracturing (fracing) rule and the impact it will have on energy development in Indian Country.

My testimony will focus on problems with the BLM's fracing rule, BLM's failure to conduct meaningful tribal consultation, and some solutions to these issues. Although I have many concerns with the BLM's fracing rule, this should not be confused with a lack of concern for the environment, water, or the health of the Tribe's members. The Tribe is interested in not duplicating existing regulations and creating an efficient permitting process that will allow us to conduct business on the Reservation. The Reservation is our home and we know the value of protecting our natural resources.

I. Energy Development of the Ute Indian Tribe

Energy development has long been an important part of the Tribe's Reservation economy. Production of oil and gas began on the Reservation in the 1940's. Over the past 70 years, production has been ongoing and went through periods of expansion. Today, the Tribe is a major oil and gas producer. The Tribe leases about 400,000 acres for oil and gas development. We have about 7,000 wells that produce 45,000 barrels of oil a day. We also produce about 900 million cubic feet of gas per

day. And, we have plans for expansion. The Tribe is currently in process of opening up an additional 150,000 acres to mineral leases on the Reservation with an \$80 million investment dedicated to exploration.

The Tribe relies on its oil and gas development as the primary source of funding for our tribal government and the services we provide. We use these revenues to govern and provide services on the second largest reservation in the United States. Our Reservation covers more than 4.5 million acres and we have 3,175 members living on the Reservation.

Our tribal government provides services to our members and manages the Reservation through 60 tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The Tribe is also a major employer and engine for economic growth in northeastern Utah. Tribal businesses include a bowling alley, a supermarket, gas stations, a feedlot, an information technology company, a manufacturing plant, Ute Oil Field Water Services, and Ute Energy. Our governmental programs and tribal enterprises employ 450 people, 75% of whom are tribal members. Each year the Tribe generates tens of millions of dollars in economic activity in northeastern Utah.

The Tribe takes an active role in the development of its resources as a majority owner of Ute Energy which has an annual capital budget of \$216 million. In addition to numerous oil and gas wells, Ute Energy teamed with the Anadarko Petroleum Corporation to establish and jointly own the Chipeta gas processing and delivery plant in the Uintah Basin. The Tribe recently approved plans for Ute Energy to become a publicly traded company. This investment will allow us to expand our energy development and increase revenues.

Despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting and regulatory process is the single biggest risk factor to operations on the Reservation. Add the BLM's proposed hydraulic fracturing regulations increase the risks dramatically. This process is primarily managed by the Department of the Interior (DOI).

II. General Problems with BLM's Proposed Hydraulic Fracturing Rule

The BLM is developing new regulations, which I understand are under review by the Office of Management and Budget (OMB), for hydraulic fracturing activities used in the oil and gas development process on "public lands." We are concerned with the process by which BLM is developing its regulations as well as the impact it will have on the significant oil and gas industry on our Reservation. On its face, there are a variety of problems with BLM's fracing rule.

First, the BLM incorrectly considers Indian lands to be public lands and plans to apply its fracing regulations to Indian lands. Indian lands are not public lands. Indian lands are for the exclusive use and benefit of Indian tribes. BLM's oversight of activities on our lands should be in fulfillment of the federal trust responsibility to the Tribe. BLM should not apply public interest standards to our lands. The Tribe requests that the Subcommittee develop and Congress pass legislation that would prevent Indian lands from being swept into laws and policies for public lands.

The fracing rule, as currently written, will reduce the benefits that the Tribe is able to realize from its lands. The fracing rule will increase costs to operators, slow development of Reservation lands, and introduce additional uncertainty in the permitting process that will lead to reduced oil and gas development on our Reservation. This may be acceptable for oil and gas development on public lands, but not on the Tribe's lands. The Tribe relies on its oil and gas development to fund its government, provide services to members, and invest in the regional economy.

Second, we know of no incidents on tribal lands that would necessitate federal regulation of fracing. According to the draft regulations the BLM provided at a meeting in Salt Lake City, Utah, the BLM plans to look at three key issues pertaining to the fracing process: wellbore integrity, disclosure, and flowback water. For each of these three areas, there has never been a fracing related problem on our Reservation.

Third, the proposed rule would require prior approval from the BLM for all well stimulation activities, not just fracing of oil and gas wells. This additional time required for BLM staff to review a proposed fracing job only adds to delays oil and gas companies on the Reservation face—delays that have economic consequences. Requiring BLM approval for fracing adds to the burden of an already short-staffed BLM Field Office. At our BLM Field Office there is already a backlog of application for permits to drill (APD). Adding an additional burden on BLM staff will only worsen the problem.

Fourth, oil and gas operators seeking permits to drill on Indian already undergo an extensive environmental review process before they can begin drilling activities. This process has become lengthy, time consuming and costly, so much so that there is a backlog of hundreds of APD's that have not been acted upon by our local BLM Field Office.

An oil and gas permit is already subject to approval processes by the BLM, the Bureau of Indian Affairs, the Utah Division of Oil and Gas and the Tribe's Energy and Minerals Department. New Clean Air Act restrictions may be on the horizon for activities on the Reservation, and new United States Fish and Wildlife Service sage grouse conservation requirements are pending. Further, hookless cactus mitigation requirements applicable to the Tribe's lands become more restrictive daily. When operating on the Reservation, our industry partners are also subject to review under the National Environmental Policy Act and BLM's Federal Lands Policy and Management Act planning rules. Adding to these hurdles and requirements by requiring additional approval of fracing plans will in no way improve an already over-regulated process.

Fifth, delays in the oil and gas permit approval process are already causing energy companies to limit their activities on the Tribe's lands. Companies operating on the Reservation cite the federal approval process as the single biggest risk to their business activities, and additional delays will cause oil and gas operators to leave the Tribe's lands for state and private lands. Each delayed approval for drilling activities, each drilling rig that must leave the Tribe's lands due to uncertainty or inactivity, each limitation on oil and gas production on the Tribe's lands, reduces the Tribe's revenues from oil and gas development.

The additional delays that will be caused by the BLM's fracing rule will have an astronomical economic impact on the Tribe. For example, a company operating single drilling rig can drill approximately 20 wells per year. If that drilling rig were to leave the Reservation because of delays in obtaining permits, the economic loss to the Tribe will be approximately \$16.2 million over a twelve-month period.

In addition, some companies could operate three drilling rigs on the Reservation and drill approximately 60 wells per year. If those drilling rigs leave the Reservation or are limited in the number of wells they can drill, the economic loss to the Tribe will be approximately \$48.7 million over a twelve-month period. This data is illustrative of only a single company's drilling program; the figures become more daunting when you multiply the figures by the many companies operating on the Reservation.

Finally, BLM's fracing rule is premature ahead of Environmental Protection Agency (EPA), and other federal agencies, ongoing scientific studies on fracing. BLM has offered no justification for proceeding with this new regulation without the benefit of these studies. Without clear demonstration of a problem with the fracing process, specifically the type of fracing done on our Reservation, and any other information that may come from these studies, the BLM regulation is putting the cart before the horse.

III. Specific Problems with BLM's Proposed Hydraulic Fracturing Rule

First, the BLM's hydraulic fracing rule requires "pre-fracing disclosure." The fracing rule, as drafted, requires operators to provide BLM with detailed information regarding anticipated fracing operations at least 30 days in advance of the proposed fracing job. The information required by BLM includes identification of all additives to be used in fracing and the complete chemical makeup of the overall fracing fluid mixture, as well as other detailed information. The "plan" is subject to approval by the authorized officer.

Requiring "pre-fracing disclosure" is impractical and will ultimately be ineffective. The fracing rule would require operators to estimate the types and amounts of chemicals to be used at a time when that information may not be known or when that information may change due to conditions the operator obtains from subsurface conditions. In addition, the plan that the operator submits to the BLM for approval may change over the course of time due to scheduling conflicts and other factors thus forcing the operator to use a different service provider which results in the use of a different set of product additives. Moreover, fracing treatments are often continuously adjusted and revised as the well is drilled and more information is gathered about well-specific conditions.

As a result, the information that is supplied to the BLM prior to fracing a well may well become stale as conditions change. Thus, the information supplied to the BLM will be of no practical use, yet causing the operator to devote substantial resources to gathering and providing this information to the BLM. This is simply not practical.

Second, the BLM's fracing rule requires disclosure of "chemical concentrations." The BLM fracing rule requires the disclosure of the percentage by mass of each chemical contained in the fracing fluid. However, providing the exact concentration of an ingredient in the fracing fluid used at a specific well site would be very difficult and burdensome because it would require sampling and extensive laboratory testing of the fluid used at each well.

In contrast, state governments that require the disclosure of fracing fluids only require the maximum concentrations of chemicals. This also helps to prevent the disclosure of the chemical formulas or particular additive products, which companies consider proprietary information. The Tribe is concerned that rather than disclosing confidential competitive information, services providers simply will not operate on tribal land or alternatively, the very best products will not be used for oil and gas recovery on tribal land.

Third, the BLM fracing rule requires disclosure of more than just "intentionally added ingredients." The BLM's fracing rule, as currently written, requires the disclosure of all ingredients in a fracing fluid mixture. State governments which have adopted a fracing rule only require the disclosure of ingredients intentionally added to a base fluid and does not extend to chemicals that may be incidentally present in fracing fluids as a result of chemical reactions or impurities in the base fluid. Both Texas and Colorado have adopted this approach.

Fourth, the BLM fracing rule requires an operator to provide the "chemical composition of flowback" as part of its plan for well stimulation operations. This requirement is inherently unworkable. It would, in effect, mandate that operators sample and analyze the flowback fluid from a well to determine its chemical makeup at a time when the flowback has not even been generated and would therefore be impossible to analyze.

Finally, the BLM fracing rule requires "compliance certification." The BLM fracing rule requires operators to certify that they are in compliance not only with applicable federal law but also state and local law concerning fracing. This would effectively make state and local law applicable to Indian lands. The BLM cannot by regulation make state and local law applicable to Indian lands without a specific act of Congress. The Tribe maintains its own laws and, pursuant to its federal trust responsibility, the BLM should instead be encouraging tribal regulation of oil and gas activities on tribal lands, rather than threatening tribes with state and local jurisdiction.

IV. Failure of BLM to Fulfill Tribal Consultation Policies

After barely beginning to consult with tribal governments, I understand that OMB is already reviewing BLM's draft fracing rule. This rule will have a substantial impact on energy development on Indian lands and BLM must fulfill tribal consultation policies. To date, BLM has not complied with Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments, the Department of the Interior's Policy on Consultation with Indian Tribes (Tribal Consultation Policy), and its December 1, 2011, affirmation of those policies in Secretarial Order No. 3317. BLM's actions do not uphold its obligations under the federal trust responsibility and do not fulfill the Department's long-standing and ongoing commitment to consult with Indian tribes.

The Department's tribal consultation policy states that tribal "[c]onsultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making [and, that]. . . [c]onsultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility." Department of the Interior Policy on Consultation with Indian Tribes at § II. In contrast, BLM has only held four informational meetings on the proposed fracing rule and already has a draft rule pending at the OMB for publication in the Federal Register.

In addition, BLM never developed a protocol or timeline for tribal consultation, did not include tribal input in its draft regulations, did not engage tribes in a discussion about the need for a rule, and did not engage tribes in a discussion about alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes. Because of the impacts the proposed fracing rule will have on tribal resources, BLM is required to follow the "Stages of Consultation" set out in the Department's Policy on Consultation with Indian Tribes in the development of any fracing rule. These stages include an "Initial Planning Stage," a "Proposal Development Stage," and an "Implementation of Final Federal Action Stage."

On March 26, 2012, a few tribes met with BLM in Washington, D.C. to attempt to resolve our concerns regarding BLM's failure to meaningfully consult with tribes. BLM rejected our concerns. BLM stated that its past actions and its willingness to

meet with tribes if tribes so request fulfills the Department's tribal consultation policies. These actions completely fail to provide tribes with effective consultation as required by the Administration's and the Department's consultation policies.

If corrective action is not taken, the BLM's actions will fail to fulfill a Departmental policy that was announced only four months ago. In December 2011, the Department announced that its new Tribal Consultation Policy would provide, "a strong, meaningful role for tribal governments at all stages of federal decision-making on Indian policy." Press Release, Department of the Interior, "Secretary Salazar Kicks Off White House Tribal Nations Conference at Department of the Interior" (Dec. 2, 2011). BLM has not afforded tribes the meaningful role described in this announcement in the development of its fracing rule.

To ensure that the proposed rule will be developed according to tribal consultation policies, I ask that the Subcommittee seek the help of the Assistant Secretary for Indian Affairs in this matter. The Assistant Secretary could work with the BLM to: (1) develop a consultation protocol that will comply with the Department's Tribal Consultation Policy, and (2) determine how the proposed rule should apply in Indian Country if at all, in light of the federal trust responsibility, the federal policy to promote economic development and tribal self-sufficiency, and other concerns unique to Indian Country.

I also ask that the Subcommittee inquire about involving the Department's Tribal Governance Officer (TGO) to monitor BLM's actions as it develops an appropriate consultation protocol. This protocol should clarify that BLM has withdrawn the draft regulations from OMB or excluded Indian lands from the proposed rule, is ready to engage tribes in the Initial Planning Stage and the other two stages of consultation, and generally set out the steps that BLM will follow to comply with the Department's Tribal Consultation Policy, including working with tribes to develop a consultation timeline.

The Department's TGO can assist and monitor BLM's efforts to develop this protocol. The Department's Tribal Consultation Policy directs TGO's to facilitate government-to-government consultation, to implement a reporting system to ensure that consultation efforts are documented and reported to the Secretary, and to fulfill other TGO obligations under the Department's policy. Tribal Consultation Policy § VII.B.1(a)-(g).

Fortunately, the BLM still has the opportunity to correct its violation of the policy and take steps to fully engage tribes in consultation. The Tribe is willing to work with the Department, its TGO, the BLM, and the Assistant Secretary for Indian Affairs to develop an appropriate tribal consultation protocol to consider issues related to fracing.

V. Conclusion

I would like to thank Chairman Young, Ranking Member Boren and members of the Subcommittee for the opportunity to present this testimony on behalf of the Ute Indian Tribe. The Tribe stands ready to work with the Subcommittee to find common and practical ground concerning the proposed fracing rule and to eliminate the barriers to tribal resource development that this rule would create. The current barriers, and the promulgation of any new barriers, have a direct effect on the Tribe's revenues, our ability to invest in the future, and the services we are able to provide our members, our children and grandchildren.

Towaok (Thank You)

Mr. YOUNG. Tex and Irene, do not be too hard on Mr. Spisak. He is a lackey and came down here at the direction. Who should have been sitting there was Mr. Salazar or somebody higher up. They are following the lead.

Look who the witnesses were they had. They had Trout Unlimited and Carol Browner and the Defense League.

He is just fulfilling his job. I am not defending him. I am just saying who we should be talking to and you should be talking to is the Secretary. He chose not to show up. Remember the President said they had your back. I would again check that out.

He is just a hired hand, you know.

Mr. T.J. Show, Blackfeet Tribal Business Council.

**STATEMENT OF T.J. SHOW, CHAIRMAN,
BLACKFEET TRIBAL BUSINESS COUNCIL**

Mr. SHOW. Good morning, Chairman Young and members of the Subcommittee. My name is T.J. Show. I am the Chairman of the Blackfeet Nation of Montana.

I am honored to be here and thank you for conducting today's hearing and your interest in issues that affect energy development in Indian Country.

In presenting my testimony today, I want to honor the memory of Corporal Antonio Burnside, "Many Hides," a young Blackfeet warrior who was just recently killed in the line of duty in Afghanistan. Thank you.

The Blackfeet Reservation is a 1.5 million acre reservation established by a Treaty within the United States in 1855. Unemployment on the reservation reaches 70 to 80 percent.

The reservation is dependent on development of oil and gas to improve economic conditions for our people.

Presently, we have significant exploration activities underway by a number of companies.

Today, I would like to address three primary concerns we have about the proposed BLM fracking rule.

Number one, the lack of meaningful consultation with tribes, meeting the Department of the Interior policy on consultation with the tribes.

Number two, the disregard for tribal sovereignty by treating Indian lands like general public lands, and requiring compliance with state and local laws.

Number three, the unworkable and unrealistic provisions that have the potential for impacting the reservation's development.

I attended BLM's informational meeting in Billings, Montana on January 12, 2012. BLM stated the session was informal only and was not a formal consultation. The presentation generally discussed hydraulic fracturing, but did not include a presentation of the proposed rule, and the BLM did not solicit any tribal comments on the rule.

These discussions fall short in compliance with the Interior's consultation Order No. 3317, that communication will be open and transparent without compromising the rights of Indian tribes or the Government to Government consultation process.

Unfortunately, the BLM chose to develop a rule without participation and chose to forward the proposed rule for final adoption without regard to Order No. 3317.

BLM officials state the rule was developed to respond to public outcry regarding use of hydraulic fracturing for East Coast development of public lands.

However, we do not consider our reservation lands public lands. On tribal lands, the tribes have ownership and control of the minerals subject to the Trust obligation of the United States.

BLM's proposed rules to address public outcry for activities on public lands overreaches its goal and infringes on tribal sovereignty.

The proposed rule mandates that development of activities comply with state and local laws, imposing state and local law on

tribes is in conflict with the existing law governing jurisdiction on the reservations.

Presently, we struggle with the delayed BLM approval of APDs, which has routinely taken three to 18 months. The proposed rule adds to the already lengthy BLM review process. The delays and the burden of the rules makes the reservation development less attractive and our neighboring fee land owners will benefit long before we do.

The BLM proposed rule appears to raise three distinct concerns with hydraulic fracking. Disclosure of chemical additives for well stimulation, well bore integrity, and water management.

The Blackfeet Tribe has already implemented measures to address these concerns. The Blackfeet Tribe presently requires oil companies to number one, disclose all chemicals utilized for fracking. Number two, has contracted with BLM for an inspector for well bore integrity, and finally, number three, exploring methods for on-site water treatment for reuse.

Based on our experience with the development at the Blackfeet Tribe, we have several recommendations.

Withdraw the BLM rule and develop a separate Indian Country rule that considers the unique issues on Indian reservations. An Indian Country rule can balance the need for development with responsible regulation consistent with tribal sovereignty.

Any rule should be integrated with existing application and approval process so not to add any additional delays or burdens.

Standards for acceptable hydraulic fracking need to be developed. Disclosure is only part of the answer. Standards are required to approve or disapprove fracking activity once disclosure is made.

The development of baseline water quality data for groundwater is essential. Impacts can only be assessed with existing water quality data for comparison. Sufficient resources to the BLM and BIA are absolutely necessary for efficient implementation of the rule including enforcement.

Finally, an one stop shop would streamline the review process and approval process of necessary applications and permits at the Blackfeet.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Show follows:]

**Statement of T.J. Show, Chairman,
Blackfeet Tribal Business Council, Blackfeet Nation**

Good Morning Chairman Young and honorable members of the House Resources Subcommittee on Indian and Alaska Natives, my name is T. J. Show and I am the Chairman of the Blackfeet Nation of Montana. I am honored to be here and thank you for conducting today's hearing and your interest in issues that affect energy development in Indian Country.

The Blackfeet Reservation, located along the Rocky Mountain Front in Northwest Montana, shares a border with Canada, is adjacent to the Glacier National Park and is inhabited by approximately 9,000 members of the total 18,000 plus Blackfeet Tribal members. The Blackfeet Reservation was established by a Treaty with the United States in 1855 and today consists of 1.5 million acres. The Blackfeet homeland is known for its pristine mountain ranges, clear mountain lakes and streams, abundant wildlife and wide open country. The Tribe has a long-standing record of responsible stewardship evidenced by the existence of tribal laws to regulate, manage and protect land, natural resources and wildlife.

The Blackfeet Tribe, like numerous other large land-based Tribes, suffers from an unemployment rate that reaches 70 to 80 percent, a lack of on-Reservation economic development opportunities, an extreme shortage of housing, sub-standard govern-

mental buildings and overwhelmed medical facilities. The Blackfeet Tribal government, like many other tribal governments, is frustrated with the continued reduction of federal funds available to fulfill treaty obligations for essential services. Thus, the Blackfeet Council has determined that development of the large pools of oil and natural gas that on the Blackfeet reservation, in a responsible manner, is the most viable option to improve the Reservation economy, to provide jobs to Tribal members, to provide necessary services on the Reservation, and to bring some measure of improvement to the standard of living of Blackfeet tribal members.

Status of Blackfeet Development

The Blackfeet Reservation has a lengthy history of oil and gas development that extends back to the 1930's. The 1950's and a brief period in the early 1980's marked the heyday of production on the Reservation. However, as oil fields aged and market forces have affected development, new oil and gas production has been at a standstill since the mid-1980's. However, interest in oil and gas development has greatly increased, and beginning in 2008, the Blackfeet Tribe has negotiated Indian Mineral Development Agreements with various oil and gas companies, as authorized by the Indian Mineral Development Act of 1983. Consistent with the intent of the Indian Mineral Development Act, the Tribe exercised its sovereign authority over the Blackfeet mineral resources to establish the terms and parameters for exploration and development. The IMDA's were all reviewed and approved by the Bureau of Indian Affairs.

The Tribe is now attempting to implement the IMDA's through the negotiation of mineral leases and commencement of mineral exploration by the companies. However, progress has been extremely slow and burdensome as the Tribe and the producers attempt to comply with the requirements of the BIA and BLM for access rights to exploration sites, changing environmental requirements, permits to drill and lease approvals. Often the federal mandates are duplicative and the federal agencies have been largely unable to review and approve documents in a timely manner. For Blackfeet, the local BIA agency is responsible for leases, while the Regional Office in Billings, over 350 miles away, is responsible for IMDA issues. Permitting and development issues are handled by the regional BLM office 150 miles from the reservation. Approvals of required documents for Blackfeet development can take from 6 months to two years under the present processes. Exploration and development on the Blackfeet reservation is expensive, time-consuming and lagging behind nearby off-reservation development.

The Blackfeet Tribe is concerned that BLM's proposed rule on Hydraulic Fracturing, if adopted, will create additional burdens to an already burdensome process that will likely delay and possibly prevent beneficial development of Blackfeet oil resources. To be clear, hydraulic fracturing is necessary to fully explore and maximize oil development on the Blackfeet Reservation. At the same time, the Tribe has a responsibility to its Tribal members and other Reservation residents to insure that hydraulic fracturing activities on the Reservation are conducted in a safe and environmentally sound manner. However, the Tribe is not willing to allow the imposition of rules by the Federal Government that are promulgated without the Tribe's full participation, and that do not take into account the unique issues of development on the Blackfeet Reservation.

Lack of Meaningful Consultation

On December 1st of 2011, the Department of Interior adopted Order No. 3317, the Department of the Interior Policy on Consultation with Indian Tribes to acknowledge that the provisions for conducting consultation complies with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Tribes welcomed the consultation policy as a positive effort to enhance government to government relationships and to involve Tribes in a meaningful and transparent manner in the creation of federal policy. However, just months later, the BLM developed a rule that seriously impacts Indian Country energy development without regard to the consultation process.

Recently, I was invited by the Bureau of Land Management to participate in discussions regarding the process of hydraulic fracturing well stimulation for oil development. I attended the scheduled discussion in Billings, Montana on January 12, 2012. BLM representations, from the outset of the day-long presentation, stated the session was informational only and was not a formal consultation. While the presentation generally discussed issues related to hydraulic fracturing, it did not include an overview of the proposed rule on hydraulic fracturing, and BLM representatives did not solicit any Tribal comments on issues relating to regulation of well stimulation. While the BLM discussed the hydraulic fracturing processing with Tribes, these discussions fall short of compliance with the mandates of Order No. 3317 that

“Communication will be open and transparent without compromising the rights of Indian tribes or the government-to-government consultation process” Unfortunately, the BLM choose to develop a rule without Tribal participation, in apparent response to issues outside Indian Country, and chose to forward the proposed rule toward final adoption without regard to Order No. 3317.

The Proposed Rule’s impact on Tribal Sovereignty

Blackfeet Tribal representatives participated in a discussion with BLM officials specifically regarding the proposed hydraulic fracturing rule on March 23, 2012. BLM officials stated the rule was developed to respond to public outcry regarding the use of hydraulic fracturing for east coast development of public lands. However, we do not consider our reservation lands public lands. The considerations that the Federal Government must take into account for development on federal lands in furtherance of its responsibility to the general public do not apply on Indian lands. Tribal lands are governed by the Tribes pursuant to “inherent powers of a limited sovereignty which have never been extinguished,” derived from their sovereign existence predating European settlement of the United States. On Tribal lands, the Tribes have ownership and control of the minerals subject to the trust obligations of the United States. The policy considerations for development of Tribal lands are made by the Tribes in the best interest of their Tribal members. BLM’s proposed rule to address public outcry for activities on public lands overreaches its goal and infringes on tribal sovereign authority to make decisions concerning development on reservation lands.

As discussed above, the Tribe has entered into Indian Mineral Development Agreements, consistent with its sovereign authority to govern oil and gas development, that specifically address the development and production relationship between the Tribe and oil companies.

The additional requirements of the proposed rule may impact a company’s ability to comply with negotiated timeframes for exploration and well construction in an IMDA.

The proposed rule also mandates that development activities comply with all applicable federal laws, rules and regulations and “state and local laws, rules, and regulations.” Imposing state and local law on Tribes clearly infringes on tribal sovereignty and could empower an unfriendly local government to adopt regulations that curtail or complicate Tribal oil development. The State of Montana has no jurisdiction over Tribal lands, and the Tribe is unwilling to accept a mandate that on-reservation activities comply with local or State regulations.

In addition to the delay concerns with duplicative requirements, the proposed rule requires BLM to make a formal decision before well stimulation operations. 43 CFR Part 4 allows any interested party to appeal a BLM decision. The rule authorizes BLM to render a formal decision although no standards were included in the rule for approval or disapproval of hydraulic fracturing proposals. Thus, the door opens for entities in conflict with tribal development, regardless of affiliation with the Tribe, to file an appeal of the approval. Without standards for approval of the various hydraulic fracturing activities, the determination of whether a proposed well stimulation activity is acceptable will be determined by either an administrative decision-maker or a federal court. Further, an appeal, if pursued through the various administrative stages can take years to resolve before proceeding in Federal Court. This open-ended opportunity for interested parties to appeal creates a mechanism to thwart development of Blackfeet resources, empowers either an administrative body or the Court to determine acceptable practices for hydraulic fracturing, and more importantly, infringes on Tribal sovereignty. Such a process may be appropriate for development on federal lands, but not on Indian lands.

Burdensome Requirements of New Rule

Presently, operators must submit an application for a permit to drill (“APD”) before any drilling activity commences. The APD describes the proposed drilling plan. The proposed rule then requires submission of a Notice of Intent Sundry (“NOI”) to the BLM for any and all well stimulation activities at least 30 days before the commencement of well stimulation operations. In most instances, the chemical composition for the fracturing activity is not finally determined until data is collected from the well. To stop the on-going exploration activity and submit the NOI for approval 30 days prior to the fracturing activity will disrupt the exploration process.

Presently, we struggle with the delayed BLM approval of APDs which has routinely taken from three months to 18 months. Adding twice the paperwork, with new requirements, for review and approval will certainly increase the delay time as well as increase the overall costs for BLM. Additionally, and most importantly, the proposed rule provides no standards to approve or disapprove well stimulation ac-

tivities as no guidance is provided for acceptable or unacceptable well stimulation, chemical/additive usage, or chemical mass compositions. The rule makes no reference to current industry standards and instead appears to disregard them.

Hydraulic fracturing well stimulation is currently under debate in many forums across the country. A major concern exists regarding the chemical additives utilized by the industry for fracturing activities and I understand BLM's proposed rule is to facilitate disclosure of additives utilized for well stimulation operations. However, the rule does not address how the BLM will react to the chemical disclosures other than to grant approval or disapproval of activities. A public disclosure of specific chemicals utilized presently occurs in numerous jurisdictions but little information exists as to appropriate action following disclosure.

BLM's proposed rule goes beyond requiring the disclosure of additives to requiring a report on the complete chemical makeup of the stimulation. Prior to stimulation operations, the operator must submit the mass composition of the chemical and water combination for the entire stimulation to the BLM for approval. Two specific concerns exist with this requirement. First, no standards are provided to determine acceptable or unacceptable chemicals or in what quantities or an acceptable total chemical makeup of the stimulation activity (including fresh water). Second, I understand that stimulation activities often change depending on geologic conditions, weather and temperature, that are often unpredictable and outside the control of the operator. I am concerned that operations would shut down each time a change in the stimulation process occurs to comply with the additional reporting and approval process which would prevent expeditious exploration and likely delay moving from oil exploration to productive development. For example, if it rains, snows, or temperatures drop below freezing during well stimulation activities, the chemical composition of the fracturing fluids would likely change and, under the rule, the operation would have to stop and a new report for approval of the changed fluid submitted for approval. Blackfeet Country is subject to extreme climate changes that will likely cause changes in stimulation process especially when stimulating previously drilled wells. This provision of the rule appears drafted to intentionally stop hydraulic well fracturing activity.

These additional requirements will increase costs of development and decrease proceeds from oil development to tribal members and Tribes. Further, these additional requirements will render reservation development less attractive and open doors for our neighboring fee land owners to realize the financial benefits of oil development long before we do.

Current Blackfeet Practices

The BLM proposed rule appears to raise three distinct concerns with hydraulic fracturing well stimulation; disclosure of chemical additives for well stimulation, well-bore integrity (to insure protection of the aquifer) and water management. The Blackfeet Tribe already seriously considered these concerns and implemented measures to address them to our satisfaction. First, we have reached an agreement with our industry partners for full disclosure of chemicals/additives utilized for well stimulation. As required by the BLM in Montana, these chemicals are also disclosed to the State. Thus, the Tribe, the owner of the land and governing authority over all lands within the Blackfeet reservation is informed about the chemicals used for well stimulation. The Tribal Oil and Gas Department is now reviewing industry standards to determine acceptable types of hydraulic fracturing well stimulation.

Secondly, the Blackfeet Tribe has entered into a contract with the BLM for the training and employment of a tribal member to serve as a petroleum engineer technician that inspects all well construction activity to insure well bore integrity. Thus, we are assured that we are monitoring the construction of well casings to comply with industry standards for the protection of the aquifer.

Finally, the Blackfeet Tribe is proposing a water management scheme that will treat water recovered from hydraulic fracturing activities on-site utilizing a mobile water treatment process that will treat water for re-use.

These efforts reflect how seriously the Blackfeet Tribe considers these matters. We will continue to address them as a matter of Tribal law and regulation. Any federal regulations must take into account the Tribe's role in these matters, and its on-going effort to address them, and not supplant them.

Instead of applying a rule to Indian country that is intended to address a set of very different situations on public lands, I am hopeful that through Tribal and federal collaboration and cooperation, a different alternative is considered. In that spirit, I believe there are sound alternatives to the proposed rule.

Recommendations

1. An alternative hydraulic fracturing rule to the proposed BLM rule should be developed to apply to Indian Country exploration and development that considers the unique issues on Indian reservations. This rule should be promulgated in compliance with Interior's Order No. 3317 in collaboration with the Bureau of Indian Affairs. An alternative rule could balance the interests of Tribal oil and gas development with protection of pristine Tribal lands and water and avoid infringement on tribal sovereignty. Tribes must be trusted with decision-making authority over their lands and allowed to be at the forefront of the development of any rules or regulations that impact, affect or involve their homelands. Upon completion of a rule applicable to Indian Country, Tribes could be allowed to undertake regulatory activities through compacting or contracting. In addition to this alternative rule, Tribes should be provided financial resources to develop capacity for effective regulation. The proposed BLM rule necessitates additional funds to the BLM and BIA for implementation. Thus, it should not be considered unrealistic that Tribes, instead of the BLM, should be funded to carry out regulatory activities on Indian lands.
2. Standards for acceptable hydraulic fracturing well stimulation should be developed with consideration of the varying types of geology, chemical compositions of water, location of wells, probability of success at stimulation and industry practices.
3. This rule, consistent with public concerns, is generated due to a lack of knowledge regarding impacts of hydraulic fracturing of groundwater. However, impacts can only be assessed with existing water quality data for comparison. Thus, the development of baseline water quality data for groundwater is essential.
4. If a rule on hydraulic fracturing, similar to the proposed rule, is adopted, sufficient resources to the BLM and BIA are absolutely necessary for efficient implementation of the rule including enforcement.
5. Finally, implementation of a "one-stop shop" comprised of representatives of the various agencies with approval authority over exploration and development activities housed on the Blackfeet Reservation would streamline the review and approval process of the required applications, permits and sundry notices required for Blackfeet oil exploration and development. A one-stop shop would demonstrate a clear commitment to realistic development for the Blackfeet Reservation.

Conclusion

I would like to again thank the Committee for conducting this hearing regarding BLM's proposed rule on hydraulic fracturing and for consideration of my testimony. In conclusion, the Blackfeet Nation hopes to proceed with responsible oil and gas exploration and development while remaining always mindful of environmental protection. Further, we are not proposing the hydraulic fracturing occur without regulation. However, BLM's proposed rule is not the appropriate rule for Indian Country development and will likely prevent development of reservation fossil fuels.

Mr. YOUNG. Thank you, T.J.
Mike, you are up.

STATEMENT OF MIKE OLGUIN, VICE CHAIR, SOUTHERN UTE INDIAN TRIBAL COUNCIL

Mr. OLGUIN. Good morning, Chairman Young, Ranking Member Boren, and members of the Subcommittee.

I am Michael Olguin, the Vice Chairman of the Southern Ute Indian Tribe. I am honored to appear before you today on behalf of my tribe, my people, and Tribal Council, to provide testimony regarding the Bureau of Land Management's proposed regulation on fracking in tribal energy development.

Thank you, Chairman Young, for holding a hearing at this critical time on this important issue.

Unfortunately, we do not believe that BLM has engaged in effective tribal consultation on its proposed rules.

At Southern Ute, we have a long history of energy development, and have used fracking for many decades. If BLM had worked with us and other energy tribes to develop the proposed rules, we believe the draft rules would be much better.

Instead, we were asked to consult and then handed rules that had already been drafted.

Despite BLM's failure to effectively consult with us, we hope that the agency will consider the comments made by tribal leaders here today.

Thank you for providing us this opportunity.

We are extremely concerned that the agency's proposed fracking rules will add more hurdles to energy development on tribal lands.

We fear that additional requirements when piled on top of the existing bureaucracy will only cause more and more operators to move away from tribal lands and onto state and private lands, which are not subject to such procedures.

If developers leave tribal lands, Indian Country loses economic potential, and ultimately domestic energy production suffers.

As I mentioned, our tribe has used fracking over several decades to develop our mineral resources. Hopefully, these techniques will continue to help us develop new opportunities for decades to come.

Given our long history and experience in energy development, we respect and understand the concerns of fracking that the BLM's proposed rules seek to address.

Our Tribal Council has always sought to balance the economic benefits of our development with the environmental, health and safety concerns of our people and community.

Like many other tribes, we have already taken a number of steps to address these issues as they relate to fracking. For example, we support full disclosure of chemicals used in the fracking process. The tribe also participates in domestic water well testing programs.

In addition, we were instrumental in requiring that wells in the San Juan Basin are cemented to the surface, which protects groundwater by improving well integrity.

These and other best management practices provide protection without being unduly burdensome.

We continue to urge BLM to ensure that any rules drafted by the agency be cost effective and consistent with best practices.

Unfortunately, as currently drafted, the BLM's proposed rules do not meet these objectives.

Certain requirements proposed by the BLM are simply impractical. It is nearly impossible for an operator to submit an accurate detailed frack design 30 days prior to a fracking operation as opposed by the draft rules.

Typically, the details of such a proposal depends upon information learned as the well is drilled.

Also, the rules would require the operators run cement bond logs on each and every well. This requirement will result in significant expense but little additional benefit.

The BLM already receives well completion reports that reflect the success of well integrity measures, like cementing the well to the surface which is already required.

Beyond the substance of the proposed rules, we must emphasize our concern about BLM's ability to implement them.

BLM does not have adequate staff to process additional duties in a timely fashion. In fact, existing staff may not be qualified to do so at all.

We already deal with agencies within the Department of the Interior that are under staffed, under funded, and under qualified. Adding more Federal regulators to the mix will not help things.

Given these issues, our primary concern over BLM's proposed fracking regulations is the effect those rules would have on energy development on Indian lands.

As you know, because of the nature of Indian lands, our activities are already subject to a maze of Federal approvals. Adding more hoops to the existing requirements will only further impede tribal economic and mineral development.

We have already seen operators move on to state and private lands, where unlike tribal land, the numerous and burdensome Federal requirements do not apply.

Operators will find the path of least resistance and once they leave, they may never return to tribal lands.

The additional requirements proposed by the BLM will only make tribal energy development more challenging while imposing new restrictions that are either unnecessary or ineffective.

In closing, we believe that the status quo for addressing frack issues is working at Southern Ute. Had BLM asked us about it, we would have told them that. What is not working are the ongoing delays caused by all Federal agencies we have to deal with.

Thank you, Chairman Young and Committee.

[The prepared statement of Mr. Olguin follows:]

**Statement of The Honorable James M. "Mike" Olguin, Vice Chairman,
Southern Ute Indian Tribal Council, Southern Ute Indian Tribe**

I. Introduction

Chairman Young, Ranking Member Boren and members of the subcommittee, I am Mike Olguin, the Vice Chairman of the Southern Ute Indian Tribe. I am honored to appear before you to provide testimony regarding Indian energy development. The leaders of my Tribe are glad that you have convened this oversight hearing to evaluate potential impacts on Indian energy development likely to result from the Bureau of Land Management's ("BLM") proposed rules regulating hydraulic fracturing undertaken in the development of Indian oil and gas resources. We have serious concerns regarding the BLM's approach to this matter, and we appreciate the opportunity to share those concerns with you today.

II. Background

The Southern Ute Indian Reservation consists of approximately 700,000 acres of land located in southwestern Colorado in the Four Corners Region of the United States. Our Reservation is part of the northern San Juan Basin, an area with that has seen widespread oil and gas development over a period of more than 60 years. The land ownership pattern within our Reservation is complex and includes tribal trust lands, allotted lands, non-Indian patented lands, federal lands, and state lands. In many situations, non-Indian mineral estates are adjacent to tribal mineral estates. This land ownership pattern is very significant and magnifies the impact of differences in federal regulation of Indian lands from the absence of regulation on neighboring non-Indian lands. Added regulatory burdens to the development of tribal minerals discourage development on Indian lands and provide a direct incentive to operators to lease and drill on offsetting non-Indian lands because of the associated cost savings. The revenues we receive from natural gas development on our Reservation are our tribe's economic lifeblood. For decades, we have worked with industry to ensure that oil and gas development occurs in an environmentally responsible manner on our lands.

Hydraulic fracturing involves the underground injection of fluid and proppants under high pressure in order to propagate and maintain fractures and enhance the

movement and recovery of oil and gas. Hydraulic fracturing is necessary for the continued development of both conventional and coalbed methane resources on our lands. Thousands of wells on our Reservation have been stimulated through hydraulic fracturing. Preliminary studies also indicate that there are significant recoverable reserves associated with shale formations underlying our Reservation that will require hydraulic fracturing in order to be produced.

Over the course of the extensive history of hydraulic fracturing on our Reservation, there have been no documented cases of adverse environmental impacts resulting from such well stimulation. It should be noted that the hydrocarbon bearing zones on our Reservation are located at depths much greater (2,500 to 8,000 feet below surface) than useable water aquifers (typically 100 to 300 feet below surface). Further, the hydrocarbon bearing zones are separated from useable aquifers by thick strata with low permeability. Even with those natural safeguards in place, our tribe has led the effort, with cooperation from the BLM, to ensure that oil and gas development activities do not adversely affect groundwater resources. Significantly, we have insisted upon regular Bradenhead testing of well integrity and have required cementing of well casings to surface.

In recent years, oil and gas companies have been able to recover oil and gas resources throughout the country from shales and tight formations previously considered unproductive. This recovery has been spurred by technological advances in horizontal drilling in association with hydraulic fracturing stimulation. The significant expansion of this activity into geographic areas not previously subject to oil and gas development has fostered debate regarding the environmental effects of hydraulic fracturing. These concerns have, in turn, led the Department of the Interior and the BLM to develop a response intended to ensure the public that, through government oversight and regulation, hydraulic fracturing occurring on federal and Indian leased lands will be undertaken in an environmentally safe and prudent manner.

III. The Process of Consultation with Affected Indian Tribes Has Been Inadequate.

In mid-December of last year, BLM's Assistant Director for Minerals and Realty Management Michael D. Nedd sent a letter inviting our tribe and other tribes to engage in government-to-government consultation regarding BLM's intent to develop regulations governing hydraulic fracturing on federal and Indian lands. We welcomed this initial invitation for early consultation. On January 19, 2011, a substantial contingent of our Tribe's staff, including representatives from our Energy Department, Natural Resources Department, and Environmental Programs Division, attended a BLM information session in Farmington, New Mexico, where representatives from the BLM provided basic information about hydraulic fracturing and asked for tribal input regarding the shape that any such regulations might take. We again congratulated BLM on this seemingly fresh approach to visiting with Tribes at the formative stages of regulation development. We also delivered at that time written comments from our Chairman Jimmy R. Newton, Jr. that addressed three principal matters: (1) suggestions for process; (2) a summary of the importance of hydraulic fracturing to the Tribe; and (3) a summary of potential environmental concerns and protection measures associated with hydraulic fracturing.

In commenting on the process going forward, Chairman Newton's letter specifically urged that "the consultation process include not only an opportunity to comment on proposed BLM regulations but consultation on the formulation of proposed regulations." Chairman Newton further suggested that "BLM circulate discussion drafts of possible regulations for review and comment before any proposed regulations are issued." Only recently have we learned that our concept of meaningful consultation has been shortchanged by the BLM. It is now our understanding that, notwithstanding our requests and suggestions, BLM proceeded to develop draft proposed regulations in isolation and submitted those draft regulations to the Office of Management and Budget for publication approval in the Federal Register as proposed regulations under the Administrative Procedures Act. We have not seen the text of the draft proposed regulations but we were provided with a summary sheet of their terms. Approximately ten days ago, we submitted written comments to the BLM expressing our deep concerns with many of the substantive proposals contained in those draft regulations.

Although we genuinely appreciated BLM's initial approach to consultation, we are not satisfied with this process as it is unfolding. It is vital that Congress and the Administration realize that every extra regulatory step, every extra required report, and every extra approval imposed by the Government on operators in Indian Country increases the costs of operating in Indian Country and decreases the competitive opportunity for Indian tribes to attract energy development dollars to our lands. That critical sensitivity is lost in the approach that is reflected in BLM's summary

of its proposed regulations. More fundamentally, however, as to process, this is another example of the federal trustee's train leaving the station before Indian Country has had a chance to buy a ticket.

IV. The Tribe's Substantive Comments Would Improve the Quality of the Draft Regulations and Reduce Adverse Economic Impacts in Indian Country.

Chairman Newton's preliminary correspondence in January and written comments to the BLM in April stressed that any new regulations associated with hydraulic fracturing be cost effective and consistent with best available industry practices. The current set of draft regulations being reviewed by OMB does not meet those threshold objectives. A number of the proposals are impractical, expensive and will needlessly drive operators off of Indian lands.

For example, one of BLM's draft proposals would require a minimum 30-day advance notice and BLM approval of frac design before an operator could initiate well stimulation. Specific frac design does not occur until a well has been drilled and specific data regarding the target formation have been obtained, so it generally cannot be provided in advance of drilling. Once drilling has been completed, frac design proceeds quickly and fracturing operations begin as soon as possible in order to utilize equipment efficiently and minimize ongoing surface and wildlife disturbance. Even assuming that BLM has the personnel qualified to review and approve frac design, which is highly questionable, the approval process would cause substantial delays to an already time-sensitive process. Although a notice filing might be appropriate, an operator's ability to conduct hydraulic fracturing should not be contingent upon additional approvals beyond the Application for Permit to Drill ("APD").

Another example is reflected in BLM's suggestion that operators be required to provide cement bond logs ("CBLs") for all wells. Our experience indicates that requiring cement to the surface of well casing is a more cost effective approach to ensuring well integrity than universally requiring CBLs. CBLs are just one of a variety of additional tests or monitoring conditions that can be pulled from a hat and imposed upon operators by the BLM with little consideration for the cost or benefit to be obtained. In fact, even in the absence of approved regulations, we are increasingly seeing BLM add detailed conditions related to hydraulic fracturing as part of the APD approval process for standard wells under the guise of NEPA compliance. One recent condition called for microseismic monitoring during frac operations, which could add several hundred thousand dollars to the cost of well completion and stimulation while generating little or no useful information.

In raising these concerns, we are mindful of the important role that BLM plays in reviewing and processing oil and gas development activities on Indian lands. We, too, are actively involved in that review and we are protective of the environment. In the interest of safety and environmental protection, our Tribe has been a long-time supporter of operator disclosure of substances contained in frac fluids, and we will continue to participate in domestic water well testing and data collection. We are compelled, however, to express our concern that the steps being proposed by BLM to regulate hydraulic fracturing on our lands have been developed with little regard for practical considerations or the adverse financial impact that such regulations will have upon Indian tribes.

Conclusion

In conclusion, I am honored to appear before you today on behalf of the Southern Ute Indian Tribe. We hope that our comments will assist you in your important work on behalf of Indian Country. We look forward to continuing our work with the Subcommittee on this and other important matters.

At this point, I would be happy to answer any questions you may have.

Mr. YOUNG. I thank you. I want to thank the panel. Before I turn this over to Mr. Boren for a few minutes, I would like to suggest one thing.

I think the BLM is being heard in this room right now. There is someone in this room that will report back to the Secretary, I am confident. Look at your neighbor. You might want to find out what he is doing in the room. There is somebody in this room, believe me. I have been in this business a long time.

There is a little contradictory statement in both your testimonies. Some of you have said this. You are not public lands. That 1938

law and they interpret it as such, we will repeal that law. That will solve that.

The second one, if you have not commented on our bill, it puts you back in charge. Apparently, the Southern Ute is doing the job as they should, you require that.

Mr. OLGUIN. Right.

Mr. YOUNG. Each one of the tribes can require your regulations. I think you do a better job. This is an attempt again to keep you economically dependent on a side of beef and a blanket. That is what this is all about.

Again, this is what we have to do. You are not public land. You are private land. You are a sovereign nation. It is hard for people to understand.

We do not tell France what to do. We do not tell Saudi Arabia what to do or Nigeria what to do or Venezuela what to do.

Here we are as a nation saying you are independent, you are sovereign, but you are going to do what we tell you to do.

This fracking thing is not new. It has been done. This is a charade by those that do not want any fossil fuels developed, and they do not want you to progress.

With those little comments, Mr. Boren, would you like to be Chairman again for a few seconds? I will give you the gavel and I will transfer this over to you.

You can ask Mr. Lamborn if he would like to ask some questions.

Mr. BOREN [presiding]. Mr. Lamborn, would you like to ask any questions?

Mr. LAMBORN. Thank you, both of you, for having this hearing and for allowing me to sit at the dais here with you.

If I could make a very brief opening statement and then maybe ask a question or two.

Mr. BOREN. Without objection.

Mr. LAMBORN. I would love that.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM COLORADO

Mr. LAMBORN. I welcome everyone who has come today, including the person from Colorado, the Ute Tribe. Thank you for being here.

I appreciate your and Mr. Young's long commitment to tribal issues and specifically the focus that you have given on the important issue of energy and energy development on tribal lands.

The development of our resources is a priority for all Americans. Our nation's resources have helped us win world wars, strengthen the economy and employ millions of Americans.

Unfortunately, too often, the development of these important resources has been hindered on Federal lands by burdensome and unreliable policies of the Federal Government, and nowhere is this hindrance more offensive than on tribal lands that the Federal Government holds in Trust.

The mismanagement of these lands and that Trust has a tragic history in our nation. I am glad we are finally beginning to take steps to correct that.

The fracking rule now being put forward by the Department will in my opinion continue this historic mismanagement by putting

tribal lands at a clear disadvantage compared to private lands next door.

I want to add my voice to those here today concerned that the tribal consultation on this rule and other rules under development by this Administration has failed to be fair, transparent, and adequate.

With that, Mr. Chairman, I yield back, and when you have questions, I will have one or two.

[The prepared statement of Mr. Lamborn follows:]

**Statement of The Honorable Doug Lamborn, a Representative
in Congress from the State of Colorado**

Thank you Mr. Chairman, and Ranking Member Boren for allowing me to participate here today. I appreciate your long commitment to tribal issues and specifically your focus on the important issue of energy and energy development on tribal lands.

The development of our resources is a priority for all Americans, our nation's resources have helped us win world wars, strengthen our economy and employ millions of Americans. Unfortunately, too often the development of those resources is hindered on federal lands by burdensome and unreliable policies of the federal government. Nowhere is this hindrance more offensive than on tribal lands that the federal government holds in trust. The mismanagement of these lands and that trust has a tragic history in our nation. Too often cheating or keeping tribal citizens from their resources, the benefits of the development of those resources, or simply pushing tribes deeper into poverty by preventing the development.

The fracturing rule being put forward by the Department will in my opinion continue this historic mismanagement by putting tribal lands at a clear disadvantage to the private lands next door. I want to add my voice to those here today concerned that the tribal consultation on this rule and other rules under development by this Administration has failed to be fair, transparent and adequate.

That said, I have a number of questions, and limited time, so I would ask that you answer quickly for me, Mr. Spisak.

1. In your opinion who should be responsible for determining whether an Indian tribe should permit mineral development on their lands, the specific Indian tribe and their leadership or the federal government?
2. It's my understanding that BLM provided a draft rule to the tribes in January. Secretary Salazar and Director Abbey have both testified before this committee that the draft rule has since changed. OMB is currently reviewing it. Is OMB reviewing the same draft rule as the tribes were given and have tribes been consulted on the proposal that went to OMB?
3. Has the BLM performed an analysis of the economic and jobs impact of the proposed rule on Indian tribes and their ability to develop on their lands? Specifically, will this rule result in increased jobs, revenue and opportunity for tribes or will this hinder the development on tribal lands?
4. Would the Department support revisions to the rule to provide for a tribal opt-in? In other words, the hydraulic fracturing rule will not have any effect on tribal lands unless a tribe expressly chooses to accept it on its lands. Is this something in the name of tribal sovereignty the Department can support?

Mr. BOREN. Mr. Kildee, would you like to ask some questions?

Mr. KILDEE. Thank you, Mr. Chairman. Again, I am grateful for the fact of having this hearing.

Mr. Hall mentioned a Treaty of 1857, was it.

Mr. HALL. 1851.

Mr. KILDEE. You know, there are several parts of the Constitution that we should read. I read the part about the sovereignty of the Indian lands.

Also, this Constitution says "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or shall be made under the authority of the United States shall be the supreme law of the land."

No meeting in 1938, meeting in some hotel some place, where you were handed something on the way out and by the way, here is something you might want to read on the plane on the way home.

It says it shall be the supreme law of the land, all treaties shall be the supreme law of the land. It does not say Treaty of France or Germany. All treaties, including that Treaty of 1851, supreme law of the land, which guaranteed your sovereignty.

To be called to a meeting and being treated as someone less than equal in my mind is insulting, besides being illegal.

On fracking, I do not know a great deal about fracking, but I know a great deal about sovereignty. You had to know that, as you have seen it chip by chip taken away from you.

Let me say this, they will probably never come at you with a meat axe and take a big chunk, but they will come and take a slice here and a slice here and a slice here of your sovereignty. Do not let them use a paring knife to take a little bit of your sovereignty. You have to fight.

Not just the fracking, anything that interferes with your right, sovereignty that is guaranteed, not granted, guaranteed by this Constitution.

To my mind, this is a constitutional question. The importance of sovereignty, you have to win on both these issues, you have to win on your input as equals at any conference, as equals. Let the Indians in, right, and then hand them something on the way out to read.

I just respect all of you. I am leaving Congress this year after 36 years. I hope I will leave somewhat of a legacy of protecting Indian sovereignty.

I will leave it at that. The most precious thing you have, do not ever trade it for anything else. We will give you this, we will be a little flexible here if you just kind of shed a little bit of your sovereignty. Do not give any of it up, and you have it.

I respect all four of you for your demand that your sovereignty be respected.

Thank you very much.

Mr. BOREN. Thank you, Mr. Kildee. Just for scheduling purposes, we are getting word that we are going to have votes probably within 10 to 15 minutes. 12:45. We have a little bit more time. I was wrong.

I will yield to you, Mr. Lamborn, for any questions you may have.

Mr. LAMBORN. Thank you. I want to publicly say before I ask my question that I have two Members on this Subcommittee, Mr. Kildee and Mr. Boren, who are leaving Congress. I am going to miss them.

They have a high reputation. I have worked with them on different things, especially Mr. Boren on energy issues.

You will be missed.

Mr. Olguin, thank you for coming here from Colorado. I have long been impressed by the Southern Ute Tribe and the professional way that resources have been managed and finances have been done in such an exemplary model, a true model for the entire country.

I commend you for what your tribe has done, the people, and how they have benefitted from that.

I was in the Colorado Legislature. We would hear every so often OK, no problems here, they are on top of everything. That was always refreshing.

Mr. OLGUIN. Thank you.

Mr. LAMBORN. When it comes to energy and in particular the proposed rule by BLM on fracking and how that might affect energy production, and I have looked at your testimony, but can you summarize for us, and maybe you have already done this, forgive me if I am covering old territory here, but can you summarize how that could be a concern in that it might limit production of energy?

Mr. OLGUIN. The rules and the regs, we just find that it is an unnecessary burden, particularly when it comes to the cost, for example, requiring bond logs as an example. It is not necessary in every case, but if the rules require it, it is going to be costly, and that cost will pass on to the tribes.

We also look when rules come in, it will force companies to move, to find those areas where it is the path of least resistance. We are a checkerboard reservation, an example Chairman Young described is our description.

They will move across a line and develop a mineral. That has a potential to also impact us particularly from the standpoint of drainage.

We have a lot of concerns of the impacts the rule will have, not only for us but even the economy of the region. We are on the state line in the Four Corners. A lot of our service providers do come from Farmington, New Mexico, and that economy, the local economy around the Four Corners area is affected by what happens with us.

We feel that these rules just plainly interfere with our own operators, because we do have operations on the reservation as well that are managed by the Southern Ute Tribe, Red Willow Production Company.

I feel that we have a very strong track record of being responsible in our development, and we just find this interference is just plainly unacceptable.

Mr. LAMBORN. Do you feel the proposed rule, if the final rule is anything like the proposed rule, will negatively impact your tribe and the economic development of your tribe?

Mr. OLGUIN. Yes, we do.

Mr. LAMBORN. Thank you very much. Mr. Chairman, I yield back.

Mr. BOREN. Thank you. The real Chairman is here now, but I have a few questions. I have a couple of questions and then we will go back to the real Chairman.

Irene, let me ask you, you have been on this dais several times. You have talked about the great things going on with the Southern Ute Tribe and what all has happened, all the economic development.

Has there been a problem on your reservation which would precipitate to have some kind of Federal regulation? Have you had some environmental disaster or something like that?

Ms. CUCH. I believe to answer your question, not really.

Mr. BOREN. OK. We just heard testimony again from the BLM in which they discussed consulting the tribe on these issues. There was a particular point in your testimony that directly disagrees with this.

You state and I quote "The BLM never developed a time line for tribal consultation, did not include tribal input in its draft regulations, did not engage tribes in the discussion for the need for the rule, and did not engage tribes in a discussion about the alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes."

With all that in mind and what the BLM said today, what is your reaction to that testimony of BLM today? Do not laugh.

Ms. CUCH. My reaction is that they said they consulted with us, but I know there was one that was in Salt Lake City, but all of that was just a discussion, there was nothing like a consultation. We did have—

Mr. BOREN. I asked for your opinion. What is your opinion?

Ms. CUCH. My opinion is no, it was never clear.

Mr. BOREN. OK. Finally, Tex had to leave. Let me ask you all this, is it 45,000 barrels of oil, did you say, a day?

Ms. CUCH. Yes.

Mr. BOREN. What have you all done, and I would like to hear the other panelists, what have you all done with this revenue? Health care? What kind of investments have you made because there is oil and gas development within your boundaries?

Ms. CUCH. We usually use our revenues mostly to help to run the tribal government. It is major income. It is used to run our tribal government.

Mr. BOREN. If this development was impeded, there could be a loss of jobs, loss of services, and everything else.

Ms. CUCH. That is correct.

Mr. BOREN. Chairman Show, could you tell us what oil and gas development means to you? What kind of revenues, how it impacts you?

Mr. SHOW. Thank you, Mr. Chairman. You know, the Blackfeet Tribe just recently in the last couple of years started developing IMDAs to help prosper our tribe.

With the funds, even just the signing bonus, the tribe was able to basically get itself out of debt that we had previously incurred.

Also, just two weeks ago, we opened a tribal store, a \$7 million tribal store that employs 56 tribal members, and prior to that, there was only one game in town for 10,000 people that live on the reservation. There was only one store in town. Now, with the competition, our people are actually getting cheaper groceries and things like that.

We do have money set aside from this for economic development. Maybe a hotel. We do already have a casino. That is what we are doing with it. We are not trying to let our tribal government eat it up the best we can.

Mr. BOREN. Thank you. Mike, what are some nuggets that you could share with us about the development, economic development, jobs, that sort of thing, that results from this oil and gas revenue?

Mr. OLGUIN. First off, I would like to state that with our wealth that has been created, 90 percent of our wealth has been through oil and gas development. That in itself has created an AAA rating, which is how many times than the U.S. Government.

Along that line, we are able to issue bonds. We are able to sustain a Government, an enterprise, and even an investment component of our tribe. We have actually gone off reservation and invested in other oil and gas development companies in the Gulf of Mexico.

We own buildings in different parts of the nation. We are getting ready to develop in Oceanside, California. We are in New Mexico with real estate.

We have private equities, plus the biggest advantage here is we are able to pay a dividend to our membership, that is actually putting them well above the poverty level, and putting them into higher than the median income of people across the nation.

The oil and gas has created a lot of opportunities for us as a tribe.

Mr. BOREN. Thank you. Let me just finish on this, Mr. Chairman, and say these are real people. These are jobs. We talk about gaming in Indian Country. I have been supportive of gaming.

When we are trying to diversify, when we are trying to get people involved in all sorts of other things, whether it is building a grocery store, whether it is health care, what have you, if we impose these Federal regulations without real consultation, we are talking about taking away jobs, taking away livelihoods, in the middle of a terrible recession.

I am very proud that you have been able to hold this hearing today and we are getting to the bottom of this and figuring out that the BLM is out to lunch.

Mr. YOUNG [presiding]. It is 12:30.

Mr. Kildee?

Mr. KILDEE. No, Mr. Chairman.

Mr. YOUNG. I am going to excuse this panel. I am going to tell you what we are going to do. We have read your testimony and heard from you. We thank you.

We have some steps we are going to try to take with this so-called proposed regulation down at OMB right now, trying to expedite it. We are going to try to stop it through the Appropriations process until there is proper consultation.

I personally will tell you that if I have not heard from you, look at the Empowerment Act, so you would have control of it.

This idea that you are relying on the Federal Government to give you the OK, to pat you on the head and say well, now you cannot do it, you know, it just frosts me every time I think about it.

I want to thank each one of you. We would appreciate some comments on our legislation. We will try to take care of this problem because they did not consult with you. You did not have a chance to say no, this will not work. That is not consultation, handing you a set of regulations is the wrong way to go.

With that, you are excused.

We have the next panel, please. Wesley Martel, Council Vice Chairman, Shoshone Business Council. Larry DeCoteau, Tribal

Council Representative, Turtle Mountain Band of Chippewa Indians.

Scott Russell, Vice President of National Congress of American Indians, and Wilson Groen, President and CEO of Navajo Nation Oil and Gas Company.

Wesley, you are up first. I think everybody knows the rules. We are about ready to have a vote, so we will try to get this panel done and ask question so you all do not have to sit around here for another two hours.

Wesley, you are up first.

**STATEMENT OF WESLEY MARTEL, COUNCIL VICE CHAIRMAN,
SHOSHONE BUSINESS COUNCIL**

Mr. MARTEL. Good morning, Mr. Chairman, members of the Committee. My name is Wes Martel, Co-Chairman of the Eastern Shoshone Business Council, and on behalf of the two Councils, the Eastern Shoshone and Northern Arapaho for Wind River, I thank you for this opportunity.

The Wind River Reservation is located in West Central Wyoming with over 2.2 million acres of land. We have been in the oil and gas business since 1891.

In 1979, several tribal members undertook an investigation of our oil and gas fields whereby we were able to prove that all of the major oil and gas companies and independents operating on our reservation were stealing from us and not paying correct amounts in values.

We pointed this out to the State of Wyoming and soon all of the Western States began auditing after they learned what was transpiring and recovered billions of dollars in the early 1980s based on what they initially learned from Wind River.

Congress' answer to these egregious transgressions was the Federal Oil and Gas Royalty Management Act of 1982, which established the system as we know it today.

Minerals Management Service was created to oversee production accounting and royalty auditing and the Bureau of Land Management was delegated the responsibility of subsurface inspection and enforcement as it pertains to Federal policy and statutes.

Of course, the Bureau of Indian Affairs plays a role in regards to land records, lease agreements, and surface environmental obligations.

In 1983, I and ten others representing tribes, industry, states and the Federal Government were appointed by Interior Secretary James Watt to the Advisory Committee on Minerals Accountability, to promulgate regulations for FOGRMA.

Thirty years later, we are still waiting for these regulations to be fully implemented.

I have been around a while, Mr. Chairman, but I was not around in 1938 when we talked about the original Act.

Section 202 of FOGRMA authorizes tribes to enter into cooperative agreements with the Federal Government to assume the duties of the MMS to perform production accounting and royalty auditing functions.

This is a role that we had been undertaking at Wind River for the past 25 years.

This section of FOGDMA also allows tribes to undertake the inspection and enforcement duties associated with BLM's responsibility as relates to monitoring, enforcement and protection.

Unfortunately, this is an area where Congress and the Department of the Interior have not provided the technical and financial resources to allow for tribes to assume this important function.

In 1982, Congress adopted the IMDA to allow tribes to enter into alternative types of agreements. These leases are an important part of allowing tribes to obtain technical and administrative capabilities while maximizing return on non-renewable resources.

These standard BIA leases place tribes in a predicament whereby other jurisdictions are allowed to intrude on tribal accessible valuation, which diminishes return to tribes and inhibits abilities to improve and upgrade governmental programs, services, and infrastructure.

Triple taxation is the norm on many reservations, which inhibits the economic life of producing fields.

Based on the United States Supreme Court decision in the Cotton Petroleum case on the Jicarilla Apache Reservation, the state and counties are able to tax a non-Indian energy company doing business when a tribe signs a standard BIA lease.

Mr. Chairman, I must ask you, would you do business on an Indian reservation if you had to pay twice the tax you would off the reservation?

I really think if Congress is going to help us with mineral development, you need to fix this double taxation problem and get rid of this disincentive.

Recently, Wind River was brought into the national spotlight based on citizen complaints in the East Central portion of the reservation, where residents felt their health and water resources were being adversely affected by oil and gas activity.

For several years, the initial complaints fell on deaf ears as they were labeled trouble makers and malcontents.

However, in 2010 and 2011, under Superfund authority, the EPA drilled two monitoring wells near the homes of these residents and determined that groundwater in the aquifer contained compounds likely associated with gas production practices including hydraulic fracturing.

This was the first report by the EPA to link hydraulic fracturing to possible water pollution.

Upon release of this information, rather than a methodical calculated level headed type of inquiry being undertaken, all hell broke loose.

Some folks came unglued along with industry representatives, assailing EPA for scientifically questionable practices, critical mistakes and misjudgments, and contaminating its own monitoring wells.

This is the exact opposite of what we expected. There was a total lack of objectivity regarding the findings of the single Federal agency that undertook this volatile issue and attempted to make their best technical judgment.

Issues such as well bore integrity and inspection and other compliance must be undertaken by an authority with some regulatory power.

The content of fracking solutions must be made public so we know what is being put into the ground and how to deal with it.

Perhaps it is important for you to understand that the Shoshone and the Arapaho are far more in favor of mineral extraction than we are opposed to it. It is a critical source of our government's income and certainly creates many good jobs.

The main goal should not be how quickly we can get permits approved but how do we support safe and responsible development.

The rule as proposed could slow development but for those tribes who want to protect water and land from contamination, there are provisions in the proposed rule that will allow for transparency, assessment, and monitoring to minimize degradation.

Our worry at Wind River is that the BLM has shown that they cannot bring about compliance with existing policies and statutes. How are they going to enforce a whole new set of rules that require additional oversight, report review, and monitoring?

We believe a more enhanced regulatory role for the tribes is part of this answer.

The lack of meaningful consultation with tribes by the BLM has eliminated discussions that should have addressed assisting tribes in becoming self regulating through Section 202 of FOGPMA.

Inserting additional language into Indian Mineral Development Act agreements would provide clear information regarding drilling practices and procedures and assisting tribes in becoming stewards of their own resources.

I thank you for the time allocated, and I would be happy to answer any questions.

[The prepared statement of Mr. Martel follows:]

**Statement of Wes Martel, Co-Chairman,
Eastern Shoshone Tribe—Wind River Reservation**

Introduction

Good morning, Mr. Chairman and members of this Committee. My name is Wes Martel, Co-Chairman for the Eastern Shoshone Business Council. On behalf of the Eastern Shoshone Business Council and the Northern Arapaho Business Council, I thank you for this opportunity..

The Wind River Indian Reservation is located in west-central Wyoming with over 2.2 million acres of land where we have been in the oil and gas business since 1891. In 1979, several tribal members undertook an investigation of our oil and gas fields whereby we were able to prove that all of the major oil and gas companies and the independents operating on our Reservation were stealing from us and not paying correct amounts and values. We pointed this out to the State of Wyoming and soon all of the western states began auditing after they learned what was transpiring and recovered billions of dollars in the early 1980's based on what they initially learned from Wind River.

The Federal Oil and Gas Royalty Management Act of 1982

Congress' answer to these egregious transgressions was the Federal Oil and Gas Royalty Management Act of 1982 (FOGMA) which established the system as we know it today. Minerals Management Service (MMS) was created, (now Office of Natural Resource Revenue (ONRR)), to oversee production accounting and royalty auditing. The Bureau of Land Management (BLM) was delegated the responsibility of the subsurface inspection and enforcement as it pertains to Federal policy and statutes and the Bureau of Indian Affairs (BIA) plays a role in regards to land records, lease agreements and surface environmental obligations. In 1983, I and 10 others representing Tribes, industry, states and the Federal government were appointed by Interior Secretary James Watt to the Advisory Committee on Minerals Accountability (ACMA) to promulgate regulations for FOGMA. Thirty years later we are still waiting for these regulations to be fully implemented.

FOGRMA Section 202—Cooperative Agreements

Section 202 of FOGFMA authorizes Tribes to enter into Cooperative Agreements to assume the duties of the MMS/ONRR to perform production accounting and royalty auditing functions. This is a role that we have been undertaking at Wind River for over 25 years. This Section also allows Tribes to undertake the inspection and enforcement duties associated with BLM's responsibility as it relates to monitoring, enforcement and protection. Unfortunately, this is an area where Congress and the Department of Interior (DOI) have not provided the technical and financial resources to allow for Tribes to assume this function.

Indian Minerals Development Act of 1982 (IMDA)

In 1982 Congress adopted the IMDA to allow Tribes to enter into alternative types of agreements other than the **Standard BIA Lease**. Partnerships, joint ventures, operating agreements and other types of business agreements were envisioned as a way to allow tribes to attain technical and administrative capabilities while maximizing return on non-renewable resources. 31 years later most agreements being signed are still a form of Standard BIA Lease where minimum royalties are realized, no renegotiation terms are present and for the most part Tribes have been unable to develop comprehensive Energy Departments.

These Standard BIA Lease places Tribes in a predicament whereby other jurisdictions are allowed to intrude on tribal assessable valuation which diminishes return to tribes and inhibits ability to improve and upgrade governmental programs, services and infrastructure! Triple taxation is the norm on many Reservations which inhibits the economic life of producing fields. Based on a U.S. Supreme Court decision in the Cotton Petroleum case on the Jicarilla Apache Reservation the state and counties are able to tax a non-Indian Energy Company when a Tribe signs a Standard BIA Lease. Mr. Chairman I have to ask, would you do business on an Indian reservation if you had to pay twice the tax you would off the reservation? I really think if the Congress is going to help us with mineral development that you need to fix this double taxation problem and get rid of this disincentive.

Bureau of Land Management's Hydraulic Fracturing Rule's Impact on Indian Tribal Energy Development

Recently, Wind River was brought into the national spotlight, based on citizen complaints, in the east-central portion of the Reservation where residents felt that their health and water resources were being adversely affected by oil and gas activity. For several years their initial complaints fell on deaf ears as they were labeled trouble makers and malcontents. However, in 2010 and 2011, under Superfund authority, the Environmental Protection Agency (EPA) drilled two monitoring wells near the homes of these residents and determined that ground water in the aquifer contained compounds "likely associated with gas production practices, including hydraulic fracturing." This was the first report by the EPA to link hydraulic fracking to possible water pollution.

Upon release of this information, rather than a methodical, calculated, level-headed type of inquiry being undertaken, all hell broke loose! Some folks came unglued, along with industry representatives, assailing EPA for "scientifically questionable practices", "critical mistakes and misjudgments" and contaminating its own monitoring wells. This was the exact opposite of what was expected. There was a total lack of objectivity regarding the findings of the single Federal agency that undertook this volatile issue and attempted to make their best technical judgment. Issues such as well-bore integrity, inspection and other compliance must be undertaken by an authority with some regulatory power. The content of fracking solutions must be made public so we know what is being put into the ground and how to deal with it.

BLM—from Enforcer to Facilitator

Perhaps it is important for you to understand that the Shoshone and Arapaho are far more in favor of mineral extraction than we are opposed to it. It is a critical source of our government's income and certainly creates good paying jobs. The main goal should not be how quickly we can get permits approved but how do we support safe and responsible development. The rules as proposed could slow development but for those Tribes who want to protect water and land from contamination there are provisions in the proposed rules that will allow for transparency, assessment, evaluation and monitoring to minimize degradation. Our worry at Wind River is that BLM has shown that they cannot bring about compliance with existing policies and statutes. How are they going to enforce a whole new set of rules that requires additional oversight, report review and monitoring? We believe a more enhanced regulatory role for the Tribes is part of the answer.

Conclusion

The lack of meaningful consultation with Tribes by the BLM has eliminated discussions that should have addressed assisting Tribes in becoming self-regulating through Section 202 of FOGPMA, inserting additional language into IMDA's that would provide clear information regarding drilling practices and procedures and assist Tribes in becoming stewards of their own resources. Helping Tribes to acquire the technical and administrative capacity would uphold tribal sovereignty and treaty rights and allow Tribes to take their rightful place in contributing to the energy security of this country. In our spiritual lodges and ceremonies water is deemed a "sacred gift from the Creator" requiring great care and respect. While jobs and revenue are important, for most Indian people there are things far more important than money. We cannot forsake the blood and bones of our ancestors by desecrating the "Water of Life"

I thank you for the time allocated and would be happy to answer any questions.

Mr. YOUNG. Thank you, Wesley.
Larry, you are up.

STATEMENT OF LARRY DeCOTEAU, TRIBAL COUNCIL REPRESENTATIVE, DISTRICT 4, TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Mr. DeCoteau. Thank you for having me here. My name is Larry DeCoteau. I am Tribal Council Representative from Turtle Mountain Band of Chippewa up in North Dakota.

We are in the North Central portion of it, right on the edge of the Bakken Range, that Mr. Hall was talking about. They are right in the middle of it.

We are the only tribe in this nation who will not allow fracking on our land at this particular time, basically because we have one aquifer that supplies our water.

As this gentleman was saying, Mr. Martel, he said there is possible contamination within their wells, their test wells, this and that.

At this time, we have no intention of allowing this to come onto our tribal lands. We are looking into the new practice they have, that the Blackfeet are doing some of that, green fracking. If that comes about, we will be more than happy to look at it again. I am not sure.

The reason for it is all these chemicals that are put into these. They do not give you an idea what is in there, and we have no intention of allowing it to put that kind of pollution into our territory.

We could use the economic boost. There is no getting around it. We have 70 percent unemployment like most Northern Plains tribes. There is genuine unemployment.

A gentleman up there talked about a depression in this United States at eight percent. We have a genuine depression in Indian Country. We could use the money. We could use the economic boost.

At this particular time, we have no intention of allowing it. An oil company came up to us and offered us \$5 million a couple of months. It looked great. We could have used the money. There is no doubt about it.

We told them to put it in their pocket, put it back in your pocket, we do not want to look at it right now. In the future, I can see all these other tribes, they have been through all of this before, and

we are right on the edge, so it is a real big deal to us. It is going to come eventually.

We are going to get into the service portion of it. We are going to supply sand. We are going to supply fracking tanks, this and that.

This oil is great for Indian Country. It is one of the greatest things that has happened other than the casinos, because of economic development.

Again, there are many things you put upon the tribes, regulations, rules and regulations of this and that, again.

We live in Roulette County, and if that state decides or Roulette County decides to frack, they are going to drill right underneath our aquifer and we are not going to be able to stop this thing.

The only way to stop it is to beat them at the voting polls. We have 60 percent of the vote in Roulette County, the Native people do, and if we have to, we are going to go out and eliminate those people, I mean voting wise.

That is our point on this issue here. Again, EPA and other Federal regulatory groups, they have to be in there. I realize every Federal organization is under staffed. You can see that in the oil country.

In the western part of the state in North Dakota, there is no way they can look at all them wells. There is no way in the world with the staff they have.

It is like the gold booms of the 1800s in California. Our state has doubled. The cities have doubled out there, Williston, Bismarck, Dickinson.

You have to look at your infrastructure and everything else, but regulations are very important. Do not put regulations on the Native people that you do not put on the rest of the country.

Thank you.

[The prepared statement of Mr. DeCoteau follows:]

**Statement of Larry DeCoteau, District Four Tribal Council Representative,
Turtle Mountain Band of Chippewa Indians**

Honorable Members of the Subcommittee on Indian and Alaska Native Affairs,

My Name is Larry DeCoteau and I am the District Four Representative for the Turtle Mountain Band of Chippewa Indians. This is my first term on the council and I am honored to be here today. On behalf of my entire tribe I thank you for the opportunity to be here today to provide testimony on this important and dynamic issue. Turtle Mountain, as you may know, recently voted to ban hydraulic fracturing on our reservation. To date, I am under the understanding that we are the only tribe in the country to ban fracturing on its reservation. The fact that we unanimously voted to do so is much less important than why we decided to ban fracking. We, as elected officials of the Tribe, have a duty to know everything involved in the fracking process, we need to know the impact of fracking on our lands; everything from the environmental impact, the potential for the process to harm our water, the chemicals used in the process and the ratios of those chemicals used, the manpower needed for fracking and the ability of the oil companies to ensure those individuals respect our people and honor our ways. Fracking, as it's currently being done in the western part of the state of North Dakota is not a process that interests us at Turtle Mountain.

We will allow hydraulic fracking on our reservation when and if it can be proven to us that it can be done with zero impact on our water, with full disclosure of any chemicals used and the amounts of each chemical being used. We will allow fracking on our reservation when we can institute a detailed set of laws that ensure the process is safe, respectful of our people and culture and does not harm the environment. We will decide when that has been proven to us, not the federal government. We do not need rules and regulations proposed by the Bureau of Land Management.

We do not need yet another federal bureaucracy dictating to us what rules we have to play by, and worse, dictating to us when and where fracking can take place. We are a sovereign nation, fully capable of writing our own laws and then enforcing them.

A huge consideration when we banned fracking on our reservation was the fact that we did not yet have laws that dictated the process and ensured the safe-keeping of our precious land and natural resources. The federal government dictated to us, through a now infamous, one-sided and shameful treaty, where we would live, we do not need more directives from the federal government. What we need from the federal government is less rules and more respect for our sovereignty. Many, many of our ancestors fought for and died for our sovereignty, I ask you to please respect that fact and let each tribe decide what appropriate rules and regulations are right for them, for their people, for their culture.

Turtle Mountain people know our land best, we know our resources, we know what methods of mining and drilling we are comfortable with, and we are best suited to make the decisions that impact our land and our people. We respectfully request that the Bureau of Land Management not adopt rules and regulations impacting Indian lands and leave that duty to the those best suited to make the decisions that impact the lands and the people they were elected to represent: The Tribes.

Mr. YOUNG. I thank you.
Scott?

**STATEMENT OF SCOTT RUSSELL, VICE PRESIDENT,
NATIONAL CONGRESS OF AMERICAN INDIANS**

Mr. RUSSELL. Thank you, Mr. Chairman. Chairman Young, Ranking Member Boren and members of the Committee, thank you for having this hearing today and inviting the National Congress of American Indians to testify.

As you mentioned earlier, I am Area Vice President for the Rocky Mountain Region and I am also the Secretary of the Crow Nation.
[Speaks in Crow language.]

Mr. RUSSELL. I thank you, I addressed you in my own language, Crow language.

The National Congress of American Indians' concerns are echoing what has been said today, and that is basically proper consultation.

The Department of the Interior has a responsibility to consult with Indian tribes to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

This is Executive Order 13175, and it is also the Trust responsibility of the Federal Government.

Consultation on regulations is also required by the IMDA, the Indian Minerals Development Act. The hydraulic fracturing regulations affect us directly as they apply only to Federal lands and tribal lands.

The BLM did hold some meetings with tribal leaders, but it clearly was not consultation. The regulations were drafted before tribes met with BLM and then submitted to OMB before the due date for tribal comments last week. We did not have any input into these regulations much less meaningful and timely input.

In addition, I believe that the BLM has understated the impact of these regulations. BLM focuses on the disclosure requirements, and that does not sound like a big problem, but under these regulations, every drilling plan and every minor change to a drilling plan triggers another set of documentation and approvals by the Department of the Interior.

Federal requirements create a nightmare for tribes. As it is, we have to go through 49 steps just to drill.

The Federal Government does not have the funding or the staff to do all this. The oil and gas producers have millions of dollars worth of equipment and employees in the field, and creating multiple new requirements for Federal review and approval will drive them away. This has already happened.

My tribe, the Crow Nation, hold the fourth largest coal reserve in the whole United States. We have nine billion tons of coal. We have oil. We have gas on our reservation.

Hydraulic fracturing offers the potential for significantly expanded production.

The Crow Reservation has over two million acres of subsurface in Trust. It is checkerboarded, as you mentioned earlier.

If the costs and burdens are too high, the producers can avoid the tribal lands and drill on the private lands right next door. We will get shut out of the biggest oil boom in the history of the United States, perhaps billions of dollars.

I cannot over emphasize what kind of revenue that could do for our tribe. We are still very hopeful maybe some of those veins might be under our reservation.

In addition to the economic effect to many tribes, including the Crow Nation, we have concerns about the environmental impacts of hydraulic fracturing. It is happening all over Indian Country and upstream on Indian reservations.

We want to know more about it. We are not against it. We just want to know more.

I am here on behalf of many tribes under NCAI and the environmental concerns are important to all of us.

Will these regulations provide enough protection? There are many questions still to be answered.

One sign of a lack of consultation on these regulations is they give no consideration at all to tribal regulations on hydraulic fracturing processes. Indian tribes should be able to opt out of the BLM regulations and instead institute tribal government regulatory methods.

Finally, I would like to note that tribal lands are not public lands. Tribal lands are under the jurisdiction of sovereign tribal governments and for the benefit of our own tribes and tribal members.

However, BLM continues to treat tribal lands like public land. This extends to the burden of the application for a permit to drill.

Mr. Chairman, I mentioned these drills in the previous testimony when I sat before this Committee, and it is a travesty of the system.

Why do we have to pay \$6,500 just to drill on an Indian reservation when you can take one step off the reservation and drill for \$400? Companies are literally avoiding reservations because of this.

The fee only applies to public lands. Tribal lands should be exempted from APD fees. APD fees are known to deter investment in tribal oil and gas and it slows down much needed economic development.

I do not have to tell you how much of an unemployment rate we have. It is something we are not proud of. It is reality. We have to be allowed to help our own people.

In conclusion, I thank you for the opportunity today to testify on this important issue.

We urge Congress to continue its oversight of the BLM hydraulic fracturing regulations and the more general issue of consultation with tribes. We have great confidence that this issue with the BLM can be worked out in a beneficial way to tribes and the Federal Government, if truly meaningful consultation takes place in the near future.

Thank you again, and I will be happy to answer any questions.
[The prepared statement of Mr. Russell follows:]

**Statement of Scott Russell, Secretary of the Crow Tribe,
NCAI Board Member, Area Vice President**

Introduction

I'd like to thank the House subcommittee for Indian and Alaska Native Affairs for holding this important hearing at such a crucial time and inviting NCAI to testify. I am the Area Vice President for the Rocky Mountain Region for NCAI and the Secretary of the Crow Tribe in Montana.

The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments. Since 1944, tribal governments have gathered as a representative congress through NCAI to deliberate issues of critical importance to tribal governments.

Indian tribes control significant areas of land that contain oil & gas that could be accessed by hydraulic fracturing. BLM regulation and related activities that affect tribal lands must be guided by meaningful consultation with tribal governments. Tribal interests are distinct from the public interest and are sovereign nations, furthering the need for meaningful consultation between the BLM and tribal governments.

NCAI recently passed a resolution seeking meaningful consultation with the Bureau of Land Management regarding new hydraulic fracturing regulations. The resolution also asserts that the BLM regulations for hydraulic fracturing on public lands should not apply to Indian lands. The resolution is attached to this testimony for inclusion in the record.

The BLM is required to conduct meaningful consultation with tribal governments to develop new regulations.

NCAI's concerns are focused on consultation. The Department of Interior has a responsibility to consult with Indian tribes to "ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This is Executive Order 13175, and it is also a trust responsibility of the federal government. The hydraulic fracturing regulations affect us directly, as they apply only to federal lands and tribal lands. We are directly affected and we have not been consulted.

The BLM did hold some meetings with tribal leaders. I went to the meeting in Salt Lake City. But it clearly wasn't consultation. The regulations were drafted before we met with BLM, and then submitted to the Office of Management & Budget before the due date for tribal comments last week. We didn't have any input into the regulations, much less "meaningful and timely input." Tribal leaders were handed a copy of the draft regulations and told that it was purely an informational meeting.

In the DOI's own words, the consultation policy is necessary to, "detail early tribal involvement in the design of a process implicating tribal interests," and to, "honor the government to government relationship." BLM has not followed the consultation policy and risks creating burdensome regulations that further restrict tribes from using their lands to benefit tribal members.

In addition, I believe that the BLM understated the impact of these regulations. In all of the summaries, BLM focuses on the disclosure requirements, and that doesn't sound like a big problem. But if you read more deeply into the draft regulations, you will see that they are significantly more burdensome and will substantially impact tribal development. In particular, every drilling plan and every minor change to a drilling plan triggers another set of documentation and approvals by the Department of Interior. Federal approval is a nightmare scenario for Indian

tribes. The federal government does not have the funding or the staff to do this process efficiently. Oil & gas producers have millions of dollars worth of equipment and employees in the field with the meter running, and creating multiple new requirements for federal review and approval will drive them away because the costs are too high.

My tribe, the Crow Tribe, is directly affected. We have oil & gas on our reservation in Montana, and hydraulic fracturing offers the potential for significantly expanded production in the future. In fact, these regulations affect tribes more than anyone else. BLM manages 700 million acres of subsurface, so oil producers will put up with some extra expenses and burdens to get access to federal lands. The Crow Reservation has only 2 million acres of subsurface in trust, and it is checkerboarded. If the costs and burdens are too high, the producers can avoid the tribal lands and drill on the private lands right next door. We will get shut out of the biggest oil boom in the history of the United States, perhaps billions of dollars. I cannot over-emphasize what that kind of revenue could do for our Tribe.

In addition to the economic affect, many tribes, including the Crow Tribe, have concerns about the environmental impacts of hydraulic fracturing. It is happening all over the country, near Indian reservations and upstream from Indian reservations. We want to know more about it. Will these regulations provide enough protection? I am here on behalf of the many member tribes of NCAI, and the environmental concerns are important to all of us.

Impact on Tribal Sovereignty and Regulation

The Executive Order on Tribal Consultation has another important feature. It requires that:

When undertaking to formulate and implement policies that have tribal implications, agencies shall:

1. encourage Indian tribes to develop their own policies to achieve program objectives;
2. where possible, defer to Indian tribes to establish standards; and
3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

One sign of the lack on consultation on these regulations is that they give no consideration at all to tribal regulation of hydraulic fracturing processes. We believe that there are more efficient and effective ways to do disclosure of hydraulic fracturing chemicals and processes, and that tribes are already engaged in this regulation. The Indian Mineral Development Act of 1982 clearly envisioned a role for tribes in regulating mineral production through the use of mineral agreements. We believe that an Indian tribe should be able to opt out of the BLM regulations, and instead institute tribal government regulatory methods.

Tribal Lands are not public lands.

Though tribal lands are held in trust by the federal government, they are not public. Tribal lands are under the jurisdiction of sovereign tribal governments and are for the benefit of tribal members. However, BLM continues to treat tribal lands like public land by trying to regulate oil and gas development on tribal lands.

This incorrect treatment of tribal lands as public lands extends to the burden of the Application for Permit to Drill (APD) fees. The BLM APD fees only apply to public lands and therefore, tribal lands should be exempted from APD fees. APD fees are known to deter investment in tribal oil and gas, slowing down much needed economic development.

Tribes would like to work with the BLM to develop regulations for hydraulic fracturing that are specific to Indian lands.

Regulation that is generated in consultation with tribes can become not only less burdensome but a constructive tool to guide tribal processes. The BIA has recently conducted extensive consultation to generate new surface leasing regulations specifically for Indian lands. These regulations are likely to not only improve the economic development opportunities on tribal lands but also preserve the environment by further enabling renewable energy development.

BLM hydraulic fracturing regulations, when promulgated specifically for tribes and in consultation with tribes also have the opportunity to strike this balance. Currently, the lack of consultation almost ensures that the resulting regulation will further burden tribal economies and the process has dishonored the nation to nation relationship between the federal government and tribes.

Conclusion

Thank you for the opportunity today to testify on this important issue, and for your consideration of the views of the National Congress of American Indians. We urge Congress to continue its oversight of the BLM Hydraulic Fracturing regulations and the more general issue of consultation with Indian tribes. We have great confidence that this issue with the BLM can be worked out in a beneficial way for tribes and the federal government, if truly meaningful consultation takes place in the near future.



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-12-005

TITLE: Seeking Meaningful Tribal Consultation on the Bureau of Land Management's Proposed Hydraulic Fracturing Regulations

EXECUTIVE COMMITTEE

PRESIDENT

Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT

Ivana Najel Dixon
Pawnee Band of Northern Plains Indians

RECORDING SECRETARY

Edward Thomas
Central Council of Tlingit & Haida
Indian Tribes of Alaska

TREASURER

W. Ron Allen
Jamestown S'Kallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA

Bill Martin
Central Council of Tlingit & Haida
Indian Tribes of Alaska

EASTERN OKLAHOMA

S. Joe Crittenden
Cherokee Nation

GREAT PLAINS

Robert Shepherd
Sisseton Reservation

MIDWEST

Matthew Wesaw
Pokagon Band of Potawatomi

NORTHEAST

Lance Gumbis
Shawnee Indian Nation

NORTHWEST

Fawn Sharp
Quinalt Indian Nation

PACIFIC

Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN

Scott Russell
Crow Tribe

SOUTHEAST

Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS

Robert Tippecanoe
Comanche Nation

SOUTHWEST

Joe Garcia
Ojibwa Ojibwa

WESTERN

Ned Norris, Jr.
Tulane Ojibwa Nation

EXECUTIVE DIRECTOR

Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the NCAI seeks meaningful tribal consultation on the Bureau of Land Management's (BLM) proposed regulatory scheme regarding Hydraulic Fracturing (HF); and

WHEREAS, the BLM hosted only four informational meetings throughout the West and is describing these meetings as tribal consultations; and

WHEREAS, the BLM's proposed HF regulations were only available at one of these informational meetings; and

WHEREAS, the BLM proposes conducting tribal consultation through its field offices while Indian tribes should address policy makers in Washington, D.C. for true government-to-government consultation; and

WHEREAS, Indian lands are not "public lands" therefore, the tribes deserve a regulation that deals with Indian lands only; and

WHEREAS, tribes are also interested in consultation on the impacts of hydraulic fracturing on the environment, land and human health; and

WHEREAS, the BLM should consider that oil and gas operators seeking permits to drill on lands held in trust by the federal government already undergo an extensive environmental review process before they can begin drilling activities; and

WHEREAS, the BLM should consider that the permitting process has become lengthy, time consuming and costly, so much so that there is a backlog of hundreds, if not thousands, of applications for permits to drill that have not been processed by the BLM; and

WHEREAS, the proposed BLM regulations will require oil and gas operators to seek another round of permits for all well stimulation activities leading to further delay; and

WHEREAS, this added delay will cause oil and gas operators to leave Indian lands for state and private lands, a fact that is occurring under the Application for Permit to Drill scheme; and

WHEREAS, the BLM should balance regulatory concerns with the needs of Indian tribes to develop their energy resources to provide long-term economic resources for tribal communities; and

WHEREAS, oil and gas royalties from drilling on Indian lands are significant sources of revenue for the tribes and tribal members and the proposed BLM HF regulations will severely and disproportionately impact tribal economies because of their greater reliance on oil and gas development for economic growth and sustainability.

WHEREAS, the NCAI requests that BLM engage in true government-to-government consultation with the tribes regarding the HF regulations.

NOW THEREFORE BE IT RESOLVED, that NCAI seeks meaningful government-to-government consultation on the Bureau of Land Management's proposed Hydraulic Fracturing regulations so that the regulations will better meet the needs of the tribes.

BE IT FURTHER RESOLVED, that the Secretary of the Interior should declare that the proposed BLM Hydraulic Fracturing regulations do not apply to Indian lands because Indian lands are not "public lands" and are for the use and benefit of the tribes and tribal members.

BE IT FURTHER RESOLVED, that NCAI supports the Bureau of Land Management proposing a rule specifically for the Indian lands which should be developed with input from the tribes.

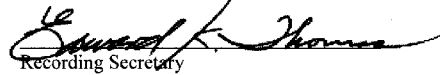
BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee at the 2012 Executive Council Winter Session of the National Congress of American Indians, held at the L'Enfant Hotel and Conference Center in Washington, DC, with a quorum present.


President

ATTEST:


Recording Secretary

Mr. YOUNG. Thank you, Scott. Wilson?

**STATEMENT OF WILSON GROEN, PRESIDENT AND CEO,
NAVAJO NATION OIL AND GAS COMPANY**

Mr. GROEN. Good morning/afternoon, Chairman Young, Ranking Member Boren, Congressman Kildee. It is a pleasure to speak in front of you again.

I am Wilson Groen, President and CEO of the Navajo Nation Oil and Gas Company. The Navajo Oil and Gas Company is chartered under Section 17 and is wholly owned by the Navajo Nation, so it is a Federally chartered corporation.

I have given written statements for the Committee and I will not go into a lot of detail on that.

I do again appreciate the opportunity to be here. Many of the speakers prior to me have covered the same issues that I am concerned about. I do not believe the Navajo Nation has formally given a response as yet, but I know in speaking with some of their staff, they have very similar concerns.

The big concerns are sovereignty, the overreach of this, and the lack of consultation. That is really the heart of the whole thing.

Navajo Oil and Gas is a very successful for profit corporation. We are 90 percent staffed by Navajo Nation members.

We take the protection of the resources of the Nation very seriously. That is not only from a corporate point of view, but for the Navajo people and with almost all Native American people that I am aware of, it is a very culturally sensitive issue.

We take that responsibility likewise very seriously.

Our mission statement is to maximize the resources for the benefit of the Navajo people with respect for Mother Earth. Again, we take this very seriously.

The fracking regulations that are being talked about, it has to be done in the best interest and with proper consultation. We keep coming back to that.

The tribal oil and gas producers, as mentioned, not only here, but if not on the Nation, with these regs, with the taxes and other issues, they will move off and do their development off the Nation's lands.

For Navajo Oil and Gas, we very specifically have a new resource, the shale that is developing in the Four Corners area. It is significant. Is it developed like the Bakken at this point? No. Does it have the potential? Yes. It has huge potential.

We need to know how to develop. We are evaluating these processes and procedures, what is the most applicable way.

Again, it is being done in a very proactive, best management practices.

As was mentioned earlier, we as a company and the Nation as part of their permitting procedures—when we run casing in a well, all those types of things are taken into account.

In my experience, I cannot recall ever a situation in which there has been contamination of a water zone that is a result of the fracking process.

Has there been well bore integrity breakdown? Yes. That is one of the reasons that we now instigate the practice of cementing to

the surface. Again, we want to focus on best practices to allow these fracking procedures to proceed on safely and without the undue and unnecessary regulatory burden that the current rules are proposing.

Again, I basically support all of the comments that have been made by all the various tribes here earlier.

I look forward to any other additional comments. I may add one additional thing. One of the overall issues with this is still the same issue as the February hearings, releasing some of the chains and letting the Native Americans develop their resources.

I appreciate this Committee's support of 415(3) and the amendments that are put before it.

Thank you.

[The prepared statement of Mr. Groen follows:]

**Statement of Wilson Groen, President & Chief Executive Officer,
Navajo Nation Oil and Gas Company**

Introduction

Good afternoon Chairman Young, Ranking Member Boren, and members of this distinguished Subcommittee.

My name is Wilson Groen and I am the President and Chief Executive Officer of the Navajo Nation Oil and Gas Company (NNOGC), a company wholly-owned by the Navajo Nation (the Nation). NNOGC is active in oil and gas exploration and production on and off Navajo lands, owns and operates a crude oil pipeline, and is a retail and wholesale distributor of refined petroleum products. I had the privilege of appearing before you in February of this year to discuss Chairman Young's "Native American Energy Act" (H.R. 3973), and urge you to bring that bill to a markup in the full Committee on Resources.

Thank you for the opportunity to appear today to discuss the Bureau of Land Management's (BLM) proposed hydraulic fracturing regulation that will provide additional and unnecessary regulatory burdens on energy producers in Indian Country.

NNOGC's mission statement is particularly appropriate considering the theme of this oversight hearing. It is NNOGC's mission to "Maximize resources for the benefit of the Navajo Nation with respect for Mother Earth." I can assure the Subcommittee that NNOGC approaches its mission and its operations with utter seriousness.

Background of the NNOGC

In 1992, the Navajo Nation Energy Policy (Energy Policy) was issued by the Nation after much discussion and input from energy experts, environmentalists, economic development specialists, lawyers, and political leaders of the Nation. The Energy Policy observed that the Nation was resource rich, but that it was neither obtaining proper value for its minerals nor, more importantly, participating in the energy industry as a business owner. For example, the standard oil and gas leases issued by the Bureau of Indian Affairs (BIA) relegated the Nation to the role as passive lessor, and that needed to be changed.

NNOGC was established in 1993 and is a direct outgrowth of the Energy Policy. The Nation's objective was to launch a tribal corporation to engage in oil and gas production as an integrated, for-profit business entity to maximize the value of the Nation's energy resources for the benefit of the Navajo people.

NNOGC has acquired and now operates an 87-mile crude oil pipeline, acquired and is continuing to acquire significant oil and gas working interests in the Greater Aneth, Utah, oil fields, and expanded its retail and wholesale business. Just last week, NNOGC entered an option to purchase 10 percent of Resolute Energy Corporation's interest in the Aneth Field, the largest oil producer in the State of Utah.

While NNOGC is still in a robust growth mode, it has returned significant royalty payments, taxes, right-of-way payments, lease payments, scholarships and other contributions to the Nation and host communities. Much of the Nation's resources used to provide employment and services to the Navajo people derives from NNOGC's operations.

NNOGC's Oil and Gas Activities

Since 2005, oil and gas production on Navajo lands in southeastern Utah has increased and the Nation is consequently witnessing an increase in oil and gas royalty revenues. It is critical to the continued growth of the Nation's economy to continue oil and gas resource development on Navajo lands.

NNOGC, often with industry partners, is also leasing and developing tracts of land on and near the Navajo Reservation. NNOGC has obtained rights to 150,000 acres of land within the Nation to develop coal bed methane, oil and conventional gas resources. NNOGC is also exploring the feasibility of developing helium reserves on the Navajo Reservation. NNOGC has recently partnered with another company to develop oil and gas reserves in Montana.

As the Committee will surely appreciate, these activities contribute not only to the Nation's self-sufficiency, but also to the energy security of the United States.

NNOGC Comments on the BLM's Proposed Rule

NNOGC is a corporation wholly-owned by the Nation, and is a significant producer of oil and natural gas from Nation lands. With the largest reservation and tribal population in the U.S., NNOGC's energy-related activities represent a major source of revenues to the Nation and significant employment and income opportunities to Navajo people.

Tribal oil and gas producers and their private sector partners around the country, including the Southern Ute Indian Tribe, the Ute Tribe of the Uintah and Ouray Reservation, the Mandan Hidatsa and Arikara Nation, and the Blackfeet Nation, make prudent use hydraulic fracturing and believe the practice necessary for the future development of their mineral resources. NNOGC agrees with these sentiments, particularly with respect to the anticipated development of recently-acquired lands and mineral resources.

Should the department proceed with a rule regulating the practice of hydraulic fracturing, NNOGC strongly suggests it be guided by the following principles and considerations.

The expressed justification for the rule is to "protect the larger public's interest in the public domain," and as Indian lands cannot remotely be considered "public lands," the rule should not apply to Indian lands in the first instance.

Nevertheless, if the department decides to proceed with a rule and intends the rule to have application to activities on Indian lands, the rule should not include reference to state and local rules or jurisdiction over activities and persons on Indian tribal lands, see e.g., 25 CFR 1.4.

Departmental officials have cited environmental protection, and specifically water quality measures, as justifying the need for a Federal rule to regulate activities related to hydraulic fracturing. The reality is that best management practices have been successfully developed in the oil and gas industry relating to the hydraulic fracturing process, the construction and monitoring of wells and wellbore integrity, groundwater sampling and protection, and others, all of which minimize the types of environmental degradation that is at the heart of the argument for a Federal rule.

Unlike all other landowners in the U.S., Indian tribes and their development corporations such as NNOGC face unique hurdles in their efforts to identify and develop conventional energy resources. These hurdles include significant delays in securing Federal approvals for land leasing and related permitting, an untimely Federal appraisal process, fees for applications for permits to drill and other Federal fees, NEPA compliance, and other challenges which, taken together, result in underinvestment in energy resource development on tribal lands.

A Federal rule relating to hydraulic fracturing will result in additional and extraordinary delays in getting tribal projects moving because the need for new BLM approvals will likely foster appeals that could take the Interior Board of Land Appeals a year or more to decide.

Imposing a new, burdensome rule on tribal energy producers and their partners is contrary to the essential thrust of Indian energy bills now pending in the House of Representatives and the Senate that are intended to remove unreasonable, uneconomic, or anachronistic barriers to more vigorous energy production on Indian lands and to promote tribal self-determination and self-sufficiency. The BLM's proposed regulation will place additional burdens on an already over-regulated industry and will harm Indian tribes, their members and surrounding communities, many of which depend on energy production to drive the regional economies.

To-date, the BLM has held four regional meetings to discuss a draft rule informally shared with tribes earlier this year. I am reliably informed that a second draft rule has been developed but has not been circulated to any tribes. Given there is a second draft rule extant, and as various Indian tribes, the National Congress of

American Indians, the Council of Energy Resource Tribes, industry groups, and Members of Congress have already noted in correspondence to you, the breadth and depth of BLM outreach and consultation with Indian Country has been insufficient given the potential impact the rule could have on tribal energy resources and economic development.

In lieu of the proposed rule's current trajectory, NNOGC has urged the department to undertake a more vigorous consultation with the tribal community consistent with President Obama's public commitments and Secretarial Order 3317, in which Secretary Salazar announced a policy of "enhanced communication" when it comes to decisions that impact Indian tribes and their members.

Conclusion

In conclusion, I want to thank Chairman Young and Ranking Member Boren for their leadership in holding this oversight hearing.

If, as we suspect, the BLM insists on promulgating the proposed rule, we urge the Subcommittee to consider legislative action that will respect tribal regulatory authority and encourage the continued development of energy resources on Indian lands.

At this juncture, I would be happy to answer any questions you have.

Mr. YOUNG. I thank you. We are going to have a couple of questions.

Were any of you consulted by the BLM?

[No response.]

Mr. YOUNG. That ought to be an answer in itself. That was what this hearing was about, and about the so-called "regulations."

Mr. Boren?

Mr. BOREN. Thank you, Mr. Chairman. Just really a comment and then a quick question, one for Larry here.

Even though I am a big proponent of oil and gas development, I think when we are talking about sovereignty and tribes having the ability to say we want to do what we want to do on our land, I deeply respect the fact that you have made the decision not to do that.

I thank you for being here, even though as I said, I am a proponent of energy development. It is up to the tribes to make that decision. Thank you for being here.

For Mr. Martel, the EPA study that was done, I think without going into it because we have to go vote, there were two test wells that were drilled. Many of the folks involved with that study are saying those wells may have compromised the data. A lot of the methane and some of the other things that were discovered during those test wells, they actually naturally occur.

That was a very shallow well that was drilled, so the test wells, we are talking about less than 1,000 feet deep.

When most people think of shale wells, they think of a 14,000 foot well that is done with fracking and it is done horizontally.

These were traditional wells that were not even horizontal. They were very shallow.

A lot of times, there is naturally occurring methane. There is naturally occurring chemicals that are also used in the fracking process.

I think that study has been put on hold. We have to be very careful about how we say this is chapter and verse, this is what we are going to take and say this is how we are going to take this and we are going to regulate fracking.

I appreciate your testimony and your balanced way of letting us know about what you all are doing to develop your resources.

This is my comment. We have to go vote. I will yield back.

Mr. YOUNG. Mr. Kildee?

Mr. KILDEE. Just to thank the witnesses for your testimony. You are here today protecting the rights of your Nation and the rights of your citizens, a very important thing.

I am going to be leaving Congress but I hope that the rest of the years that God gives me that I can continue to work with you to protect your sovereignty. God bless all of you. Thank you.

Mr. YOUNG. Thank you. One other question. The thing I do not understand and again we have to go back and review these laws, you are not public land. They passed public land requirements on public land.

If they want to have those in public land, that is a different story, although I may not agree with them.

You have a right to make your own decisions. Larry, you told the oil companies to get lost right now. If an oil company comes to any one of you three and say they want to drill, you can sit down your own regulations, can you not?

Mr. DECOTEAU. Absolutely.

Mr. YOUNG. That is what we should be doing. If you make them too prohibitive, they will go someplace else. You do not need the Federal Government telling you what you can and cannot do.

What is this \$6,000 in taxes? What is that? Scott, you brought that up.

Mr. RUSSELL. Those are the APD fees.

Mr. YOUNG. APD. Thank God we have what, 27 letters in the alphabet. I am glad we have that. What is an "APD?"

Mr. RUSSELL. That is an application for the permit to drill that was imposed by the BLM.

What is crazy about this is the money does not even go locally, it goes back into the general fund for the Treasury, and it does not help local communities.

Mr. YOUNG. That does not make sense. We can probably change that. That is something that does not make sense to me. Right next door, they do not apply that, do they?

Mr. RUSSELL. No, they do not. One step off the reservation, they pay only \$400. That is why companies are staying away.

Mr. YOUNG. If you have the sovereign right to those lands, you could charge what you want for the permits. You should not have to have BLM collecting the money and putting it back in the general Treasury.

Mr. RUSSELL. Exactly.

Mr. YOUNG. This is a quagmire right now. We have to get it straightened out to try to make sure you guys fulfill your obligations to your constituents, your tribal members.

When I first started this job here a while back, I am amazed that you have been able to do anything. You are not encouraged to do it. You are told you cannot do it because.

EPA will be here next. They are already there. I am surprised the Corps is not there, come to think about it.

One other thing, Navajo Tribe, do they reuse or do you require they reuse the water in fracking?

Mr. GROEN. Currently, we have to either recycle or properly dispose of the water, depending on what is in it. The Navajo Nation

has very extensive departments, water, environmental protection, historical preservation, fish and wildlife, minerals.

They have existed for tens of years, so it is not just a new function that is there, and they look very carefully at it, and we do submit when we drill wells and so on water—any indications of water that has been found, and if a well is abandoned or plugged, we offer it back to the Nation as a water resource if it is potentially usable.

Mr. YOUNG. All right. I would like to ask a favor of all the panel members that have appeared before us, if you have some suggestions about this problem and how it can be solved other than just eliminating the BLM, we want to hear it. We are going to try to stop this set of regulations. I do not think they are fair. Again, you are not public lands. You are sovereign lands.

We will do everything we can. I do think you have the ability to be responsible. I think that is your responsibility, to make sure you do not hurt your land. You said you would not, and make sure that happens.

With that, and I do excuse you, and this Committee is adjourned. [Whereupon, at 1:01 p.m., the Subcommittee was adjourned.]

